

# Report on Air Permit Streamlining Efforts

Wisconsin Department of Natural Resources

September 1, 2004



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**This report is available on-line at:**

<http://dnr.wi.gov/org/aw/air/apii/documents/AirPermitStreamliningEffortsReportfall2004.pdf>



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# I. Executive Summary

## **Introduction**

2003 Wisconsin Act 118 requires the Wisconsin Department of Natural Resources (the Department) to streamline its air permitting program through expanded permit exemptions, registration and general permits, construction permit waivers and permit consolidation. The Act further requires the Department to submit a report to the Legislature by September 1, 2004 that describes its streamlining efforts in each of these areas. In addition, the report must analyze whether the federal Clean Air Act limits the Department's ability to carry out any of the streamlining initiatives, and must provide a schedule for additional work and legislative reports. This report is being submitted to the Legislature in fulfillment of this requirement.

In June 2003, the Department launched the Air Permit Improvement Initiative (APII) to streamline and re-engineer the air permitting process. The first two phases of APII -- the assessment phase and the adoption of an air permits program vision with measurable targets -- are complete. The Department is currently in the redesign and implementation phase, which includes redesigning the permit program to incorporate registration and general permits and other alternative regulatory approaches into the process as well as redesigning the traditional permit process, public involvement, information technology and management systems.

Wisconsin Act 118 and APII dovetail nicely. Wisconsin Act 118 provides the legislative direction and statutory authority to implement a streamlined process with new and expanded regulatory tools. The APII assessment work provided the Department with a comprehensive analysis of the existing permitting system through focus groups with regulated facilities, environmental groups, economic development specialists and Department staff as well as through interviews with air permit officials from other states. Currently, the APII process provides the structure for developing a comprehensive re-design process. In addition to incorporating new and expanded regulatory tools, it includes streamlining the traditional permit process and making information technology, management, and public involvement improvements. This comprehensive re-design approach will ensure that the new and expanded regulatory tools included in Wisconsin Act 118 will be implemented in a streamlined manner.

## **The current permitting system**

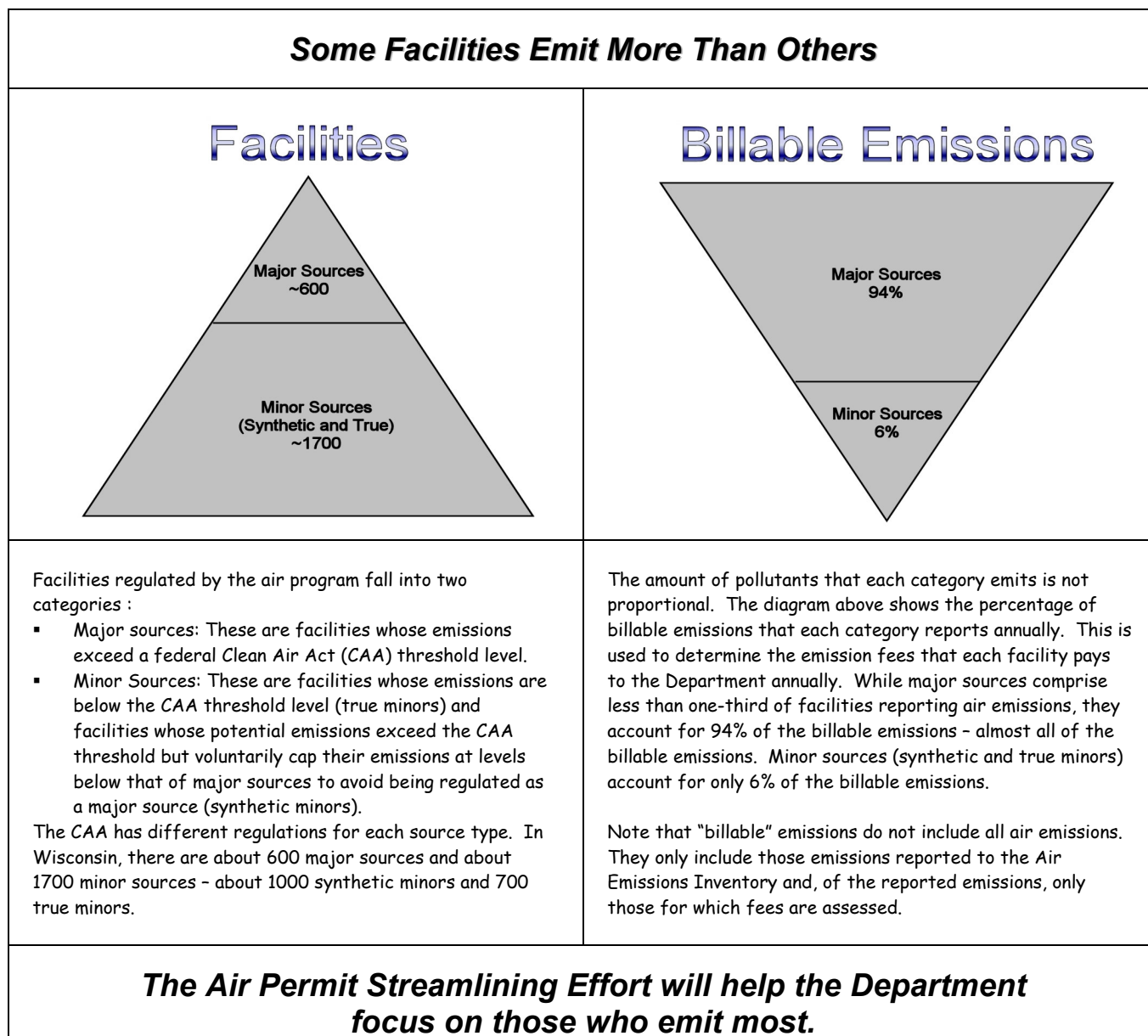
Air permits list the regulatory requirements that facilities must meet -- the emission limitations or, in some cases, management practices and monitoring, record keeping and reporting requirements. Currently, permits are customized to each individual facility. These permit reviews can be quite complicated and time consuming. The only exception to these individualized permits to date is the use of general operation permits for a limited number of industry types, such as rock crushers. Each company that receives a general operation permit is subject to identical permit terms and conditions. All air pollution sources in Wisconsin are required to have a permit unless they are exempted. Even if exempt from needing a permit, they are still required to comply with the underlying applicable air quality requirements.

Wisconsin's Air Permitting program consists of two main sub-programs: construction permits for new facilities and new projects at an existing facility; and, operation permits that cover the entire facility and consolidate all air permit requirements.

Facilities and projects are divided into major and minor sources, depending on their potential to emit certain pollutants and the air quality in the area in which they are located. The federal Clean Air Act has specific requirements for major sources and for certain other sources as part of the Acid Rain or Hazardous Air Pollutant programs. Sources that might normally be considered major sources can opt



out of the major source category by taking documented, federally enforceable limits to reduce their potential to emit below major source levels. These are called “synthetic minor” sources.



It should be noted that the quantity of emissions is not the same as the environmental or health impact of the emissions. Different air pollutants affect the environment and public health differently. Some pollutants are very toxic in very small quantities. Others are primarily of concern because of their secondary effects. For example, they may combine with other chemicals in the air to form ozone or they may result in acid rain. Also, the way in which the pollutant is emitted and other air dispersion characteristics affect the environmental or public health impacts. For example, emissions from a very tall smokestack will have less impact locally than those emitted from a short smokestack.

Major sources tend to be larger facilities with more complex operations, multiple pollutants and more complex air regulations. These sources often need individualized permits customized to their specific

needs. Minor sources not only have lower levels of emissions but also tend to be less complex and more amenable to standardized permits.

**Appendix A** includes two fact sheets explaining the Air Permit Program and some of the terminology used in the program.

### **Overview of permit streamlining framework**

The Department's stationary source re-design framework is designed to meet the following industry, Departmental and public needs, as identified through the APII focus groups:

1. Provide facilities with permits in a timely manner and with consistent requirements and operational flexibility,
2. Reduce administrative work for facilities and the Department,
3. Create incentives for facilities to voluntarily reduce emissions,
4. Protect air quality, and
5. Improve the understandability of air regulatory requirements for facilities, the public and Department staff.

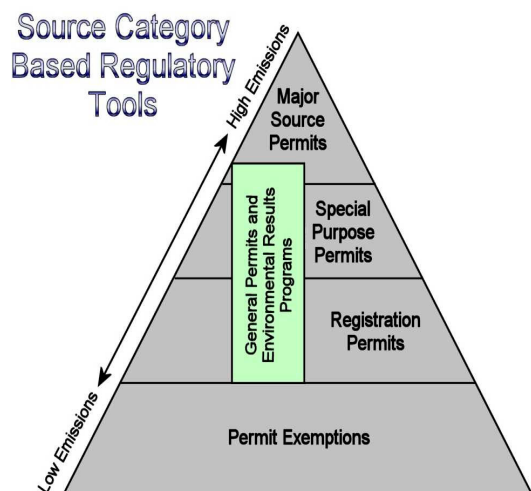
Based on these needs and Act 118 directives, the framework includes:

1. Expanding permit exemptions,
2. Developing standardized permits, including registration and general permits,
3. Developing permits with emission caps that allow for operational flexibility, including registration permits and bubble permits,
4. Exploring performance-based approaches, including environmental results programs and Environmental Management System-based permits,
5. Streamlining major source permits while meeting Clean Air Act requirements, and
6. Reducing the need to obtain permits before starting construction or making changes.

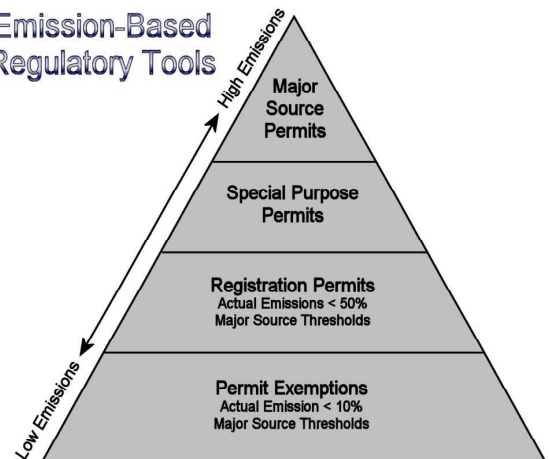
The framework can be divided into four categories:

#### **Emission-based regulatory tools:**

Facilities are divided into tiers, based on their level of emissions. Different regulatory tools apply to the different tiers. Permit exemptions apply to the very low emission tier, registration permits to the low emission tier, special purpose permits to the moderate emission tier, and major source permits to the high emission tier.



#### **Emission-Based Regulatory Tools**



#### **Source-category based regulatory tools:**

Facilities that perform similar operations, emit similar pollutants and have similar air regulations are grouped together with standardized regulatory tools. These tools include general permits and environmental results programs.

### Special purpose regulatory tools:

Facilities that don't qualify for standardized permits because of their level of emissions or the complexity of their operations will continue to need individualized permits. Regulatory tools envisioned for these sources include bubble permits and performance-based permits that allow for more operational flexibility by the facility.

### Major source regulatory tools:

The Department has limited authority to re-design the permit requirements for facilities that meet the Clean Air Act definition of major source. However, re-designing the permitting process for these sources is one of the primary objectives of the APII initiative, including consolidating the construction and operation permit processes. Performance-based permits might be an option for these sources as well.

## **Permit Streamlining Elements**

The Department's stationary source strategy includes permit exemptions, registration permits, general permits, bubble permits, individual permits, and other alternative regulatory approaches. Each of these is briefly described below.

### Permit Exemptions

The Department, through administrative rules, may exempt categories of facilities and projects from the need to obtain a construction and/or an operation permit. It is important to note that the exemption is an administrative exemption and does not eliminate the need for the facility to meet emission limits, air quality standards and other regulatory requirements. Non-compliance with regulations and standards may result in enforcement actions.

Currently, the Department offers more than 30 specific exemptions. These apply to the operation of certain types of equipment as long as emissions remain under specified threshold levels. Examples are specific exemptions related to external combustion sources, painting and coating operations and degreasing equipment. In addition, the Department offers a general exemption based upon the emissions of certain types of air pollutants. In order to qualify for the general exemption, a source must have maximum uncontrolled emissions below certain thresholds for a variety of pollutants. (See **Appendix D** for the list of current Wisconsin permit exemptions.)

The Department is investigating the following ideas to expand the permit exemptions:

- Redefining the exemptions such that only projects and facilities that have, or will have, significant environmental impact or risk are subject to permitting requirements. An exemption level at 10% of major source threshold levels is being considered.
- Making the exemption system more equitable, consistent and understandable.
- Replacing or supplementing the existing operation permit general exemptions with actual emission-based general exemptions.
- Replacing or supplementing the existing construction permit general exemptions with:
  - Actual emission-based general exemptions for the construction of new sources; and
  - Potential emission-based general exemptions for the modification of existing sources.
- Adding specific exemptions where necessary and removing specific exemptions where they are redundant with a general permit exemption.

### Registration Permits

A registration permit is a standardized document that contains generalized requirements and is applicable to a group of facilities or projects. Under Act 118, the Department must act on applications for these permits within 15 days.

The Department is creating a registration permit program that includes construction permits and a tiered system of registration permits, with varying levels of record keeping requirements and Departmental oversight depending on the level of emissions. The Department is considering the following ideas:

- Registration construction permits that would be available to all new and modified sources with emissions below a yet-to-be-determined threshold level and that are not subject to federal Clean Air Act permit requirements.
- Type A registration operation permits that would be available to facilities with actual annual emissions below 25% of major source thresholds. The facility would be able to make modifications without a construction permit as long as it still qualified for the Type A registration permit.
- Type B registration operation permits that would be available to facilities with actual annual emissions below 50% of major source thresholds. There would be a 15-day Department review of proposed modifications.
- Type C registration operation permits would be available to sources that chose to take documented, federally enforceable permit conditions to ensure that their emission potential remained below 80% of major source levels. These permits need to meet Environmental Protection Agency (EPA) requirements for federal enforceability and record keeping.

Operation Permit	Emission Level	Modifications	Record Keeping	Expiration
Type A	< 25% major source threshold	Notify but no review	Minimal	None
Type B	< 50% major source threshold	Notify and review	A little more	None
Type C	< 80% major source threshold	Review and Approve	Sufficient to meet EPA requirements	None

The Department has developed draft administrative rules for the registration permit program that are included as **Appendix G**. The Department plans to fine-tune the rules through the public comment process.

#### General Permits

A general permit is a standardized document that contains all of the applicable requirements for a particular source category. General permits are appropriate for emission sources that perform similar operations, emit similar pollutants and are subject to similar air regulations. Under Act 118, the Department must act on applications for these permits within 15 days.

The Department has developed general operation permits for rock crushers, ethylene oxide sterilizers and small heating units and plans to develop them for ten other source categories. Based on the number of sources that could potentially use each type of general permit, and the expected level of effort necessary to develop each, the Department has preliminarily set the following priority for development of the general permits:

- Phase 1: Crushers, Small heating units, Printers, Coating lines
- Phase 2: Asphalt Plants
- Phase 3: Generators and natural gas compression station turbines
- Phase 4: Others as identified

The Department is considering developing two types of general operation permits. Type A permits would be for minor sources and would not expire. Type B permits would be for major sources and would need to be renewed after 5 years. In both cases, facilities would be able to make modifications without a construction permit if the modification did not impact compliance with the permit conditions and was not subject to CAA requirements.

The Department may also consider developing a “superior environmental performance” general operation permit that would be available to facilities that chose to reduce emissions beyond required levels in exchange for reduced requirements in other areas, such as reporting.

The Department has drafted administrative rules creating a general construction permit program (included in **Appendix G**). This would be used to authorize construction or modification of a source in a particular source category. After demonstrating compliance with the requirements of the general construction permit, the facility would be able to operate the source under that permit. The Department plans to fine-tune the rules through the public comment period.

#### Bubble Permits

A bubble permit is an individually negotiated permit that caps the overall emission levels from a facility, allowing for operational flexibility inside the facility as long as the emission and ambient air quality standards are not exceeded. This type of permit is especially attractive to facilities with moderate levels of emissions that make a variety of products for a variety of clients and often need to make small changes in operations to meet client specifications and win contracts. The idea is to allow them to make these changes without first obtaining a construction permit.

The Department has issued a few bubble permits under the Environmental Cooperation Pilot Program and has the authority to issue others under the Green Tier program. The Department would like to be able to issue these types of permits outside of Green Tier, as well. Several facilities have volunteered to work through design and implementation issues with Department staff in the development of a streamlined bubble permit process.

#### Individual Permits

These are the traditional permits. Facilities that would get these permits include major sources and those minor sources that are ineligible for registration or general permits and do not want bubble permits or other alternative regulatory tools. The Department will be developing standardized control technology, monitoring, compliance determination and recordkeeping requirements as well as making other changes in administrative requirements to reduce administrative complexity. This effort will also develop standardized processes for producing permits.

*Permit Consolidation:* The Department is examining the consolidation of the construction and operation permit processes as a means of improving efficiency, clarity, and consistency. In addition, Wisconsin Act 118 requires the Department to consider consolidating the permits for sources at a facility into one permit. Changing the air program in this manner will likely require statutory and rule changes prior to being fully implemented.

*Construction Permit Waivers:* The Department has issued 3 waivers from the requirement to obtain a permit prior to construction. Wisconsin Act 118 directed the Department to issue waivers on a case-by-case basis and through rules. The Department plans to gather experience from the waiver requests as the basis for establishing criteria for rule development.

#### Alternative Approaches

The Department is exploring two performance-based approaches. The Environmental Results Program (ERP) is a sector-based approach that combines technical assistance, self-certification,



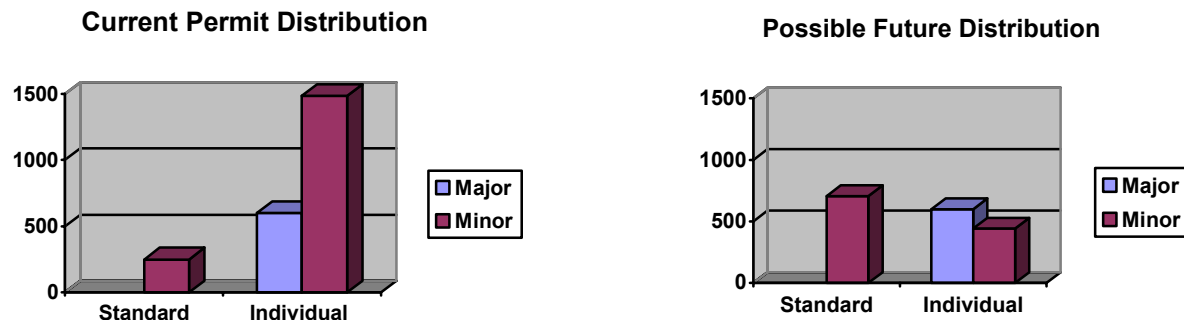
inspections and statistically based performance measurement. The industry sectors are typically comprised of large numbers of small businesses, such as autobody repair shops. The Environmental Management System (EMS) performance-based permit program uses the structure of EMS as the holder of a facility's environmental legal requirements.

Both of these approaches are highly innovative, multi-media approaches that need to be pilot-tested in Wisconsin before institutionalizing them. EPA has awarded the Department a three-year \$200,000 State Innovation Grant to help develop an ERP and an EMS/Performance-based permit program.

### **Fundamental Shifts in Wisconsin's Permit Program**

Conceptually, the framework represents some fundamental shifts in Wisconsin's permit program.

First, there is a shift from a predominantly individualized permitting process to a more standardized one. The emission-based permit exemptions and registration permits and the source-specific general permits will shift minor sources from individualized to standardized permits. The magnitude of this shift depends on the decisions made regarding threshold levels and other permit elements as well as decisions made by facilities. While it is not possible to predict the number of minor sources that will seek standardized permits, a reasonable estimate is that some 75% of synthetic minor sources and almost all true minor sources may opt for a standardized permit.<sup>1</sup>



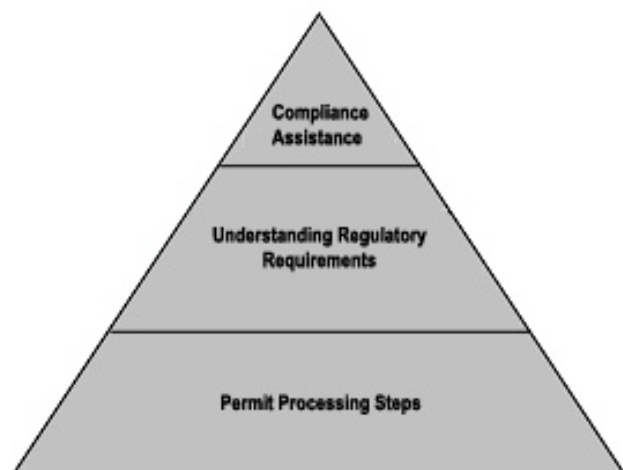
Secondly, there is a shift toward more operational flexibility. Facilities that have accepted enforceable emission caps would be able to modify their operations without first obtaining construction permits as long as they do not exceed their emissions cap and ambient air quality standards, and the project does not trigger any Clean Air Act requirements. This would apply to facilities that are exempt from permits or have registration or bubble permits. Facilities with general operation permits would also be able to make modifications as long as they continued to meet all permit conditions.

And thirdly, the APII vision is to shift resources and energy from moving through the permit processing steps to taking actions that result in real environmental benefits. By streamlining the permitting process, Department staff will be able to provide tools and assistance to facilities so that they are aware of and understand their regulatory responsibilities; facilities will be able to focus their resources on achieving, or going beyond, compliance.

<sup>1</sup> This is based on the following assumptions: all minor sources with emissions below 10% of major source threshold would opt for permit exemptions, half of the sources with actual emissions below 25% of major source threshold and a quarter of the sources with actual emissions between 25% and 50% of major source threshold levels would opt for registration permits rather than individual permits. This assumption does not account for additional sources taking general operation permits or sources taking Type C (under 80% major source threshold) registration permits.

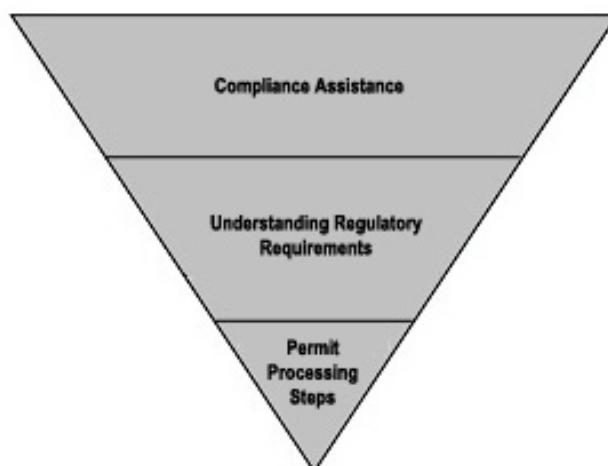
## ***Efforts Redirected From Process to Action***

### **Current Permit Process**



Currently, in issuing a permit, the department and regulated facilities spend a lot of time transmitting and manipulating data. Department Information Technology (IT) systems do not allow for efficient transmittal and processing of information. Facilities and their consultants are not always sure what information the department needs or the form it needs it in. The requirements that may apply to facilities are complex and often difficult for the facility and/or their consultant to understand. This in turn leads to confusion as to what/how requirements apply to a given source. Because so much time is taken in working through the requirements and processing the information, the department does not have the resources to actually work with facilities to help them understand their legal responsibilities and to provide them with compliance assistance as the facility attempts to meet the requirement.

### **Re-Engineered Permit Process**



In-reengineering the permit process, the focus will be on reducing the time it takes the department and the regulated facility to move through the permit processing steps. IT systems will be designed to allow facilities to easily understand what information they need to submit and make it easier for them to provide that data to the department. These systems will allow the department to process the information more efficiently so that permit decisions can be made in a more consistent and timely fashion. Time can then be spent with facilities ensuring that they understand the requirements that apply to them, what they need to do to comply with the permit, and providing assistance to them if they develop compliance questions or issues.

***APII will help facilities increase their compliance and protect air quality.***

### **Compliance**

Permits are only one part of the regulatory system for facilities with air emissions. The permit pulls together, in one document, all the legal requirements that apply to that facility as well as the compliance demonstration requirements. However, facilities are required to comply with all applicable federal and state air regulations whether or not the facility has an air permit.

Compliance activities help assure the Department and the public that the facility is complying with the applicable requirements. Compliance activities can take the form of informational materials (e.g., fact sheets, the web-based permit primer), technical assistance, inspections, legal documents such as a permit, and, formal enforcement actions. Large facilities and those with complex air-related operations frequently have staff or consultants to help ensure that they are meeting all air requirements. Small facilities often find it too expensive to hire this type of expertise. As a result,



compliance activities are needed to provide these smaller facilities with information, advice and assistance so that they can better comply with the regulatory requirements.

Data from Wisconsin's inspection database suggest that minor sources are twice as likely as major and synthetic minor sources to have violations. In addition, recent targeted inspections of two source categories dominated by small businesses (chromium electroplaters and halogenated solvent degreasing operations) found that 20% of the companies inspected were exceeding the emission limitations for the regulated hazardous air pollutants. Many of these facilities had not yet been permitted, although they were still required to meet the federal regulations.

Data from other states support the thinking that, especially for smaller facilities, a strong compliance program, which includes technical assistance as well as regular inspections, leads to better compliance and better air quality. Currently, the Department's compliance program consists almost exclusively of individualized permits and facility inspections. Shifting to a more standardized permitting process for minor sources, which eliminates the traditional permit with its listing of all applicable requirements, should be accompanied by a strong compliance program that provides clear information and an incentive to comply. Otherwise, compliance and air quality may deteriorate.

### **Fees**

On March 4, 2004 EPA issued a Notice of Deficiency (NOD) for the State of Wisconsin's Clean Air Act Title V operating program. Among the deficiencies cited by EPA were Wisconsin's failure to ensure that its Title V program funds are used solely for Title V permit costs, and failure to demonstrate that adequate funding would be available in the future to adequately support Title V program activities. The Notice stated that: "Section 502(b) of the Act, 42 U.S.C. 7661(b), and 40 CFR 70.9(a) provide that state Title V programs must ensure that all Title V fees are used solely for permit program costs." [Part II.B.1 of the Notice of Deficiency]. It notes, "The State is not distinguishing between fees collected from sources operating under different Clean Air Act programs...between fees collected under Title V and other non-Title V fee-based programs."

In the June 4, 2004 90-Day Response to the NOD, the Department indicated that it considered the Federally Enforceable State Operation Permit (FESOP) program (i.e., the synthetic minor program) to be part of its delegated Title V program responsibilities. "The 2002 emission inventory billing of \$9,739,081 included \$143,128 from State Operation Permit (non Title V) emission fee revenue and \$9,595,953 from Federal Operation Permit and Federally Enforceable State Operation Program (Title V) emission fee revenues."

EPA responded to DNR's letter on August 5, 2004. In that letter, EPA states, "WDNR currently combines FESOP and Title V fees in one account. WDNR either must separate these funds physically or use adequate accounting to segregate the Title V fees and to ensure that these fees are used only to pay for Title V costs."

The issue of future fees and funding for Wisconsin's program is unresolved at this point, and will be dependent on resolution of the EPA NOD. The Department's current understanding of EPA's position is that once a synthetic minor (FESOP) permit has been issued, the facility is no longer considered to be a Title V facility. Therefore, the on-going permit and compliance work associated with that facility cannot be funded through the emission fees paid by Title V facilities. This appears to be the case even though the facility may need to have its permit re-issued or revised in order to maintain its FESOP status and may be subject to EPA's Compliance Monitoring Strategy, which requires a Departmental inspection at least once every five years. The Department does not have the statutory authority to resolve this funding issue through adjusting emission or other fees. However, if the permit expires, the facility is vulnerable to citizen suits. If the facility is out of compliance, it is vulnerable to federal as well as state enforcement action. And, Wisconsin may be vulnerable to EPA action for failing to meet its compliance monitoring responsibilities.



### **Interface with the federal Clean Air Act**

The federal Clean Air Act requires any “major” stationary source to obtain a construction permit prior to commencing construction of a new source or a major modification of an existing source. The Clean Air Act also requires “major sources” and certain other sources to obtain operation permits. The Act also specifies procedural requirements for each of these permits.

The Department is consulting with EPA and does not anticipate Clean Air Act limitations with its proposals for permit exemptions, registration or general permits, or waivers from obtaining a permit prior to construction as long as they do not infringe on the Clean Air Act requirements for major sources. The consolidation of the construction and operation permit systems is consistent with the Clean Air Act. The Department will need to obtain EPA approval of revisions to the Wisconsin State Implementation Plan when administrative rules and state statutes are revised.

### **Schedule for Additional Work and Additional Reports**

The Department is planning the following schedule for additional permit streamlining work:

#### **Registration Permits and General Permits**

- Fall 2004 -- Winter, 2005 – Rules adopted by Natural Resources Board and submitted to Legislature for review
- Spring 2005 – Final rules submitted to EPA for State Implementation Plan approval

#### **Exemptions, Construction Permit Waivers and Permit Consolidation**

- Spring - December 2005 – Statutory changes and rule revisions, as needed.
- Winter 2006 – Statutory changes and rule revisions submitted to submitted to EPA for State Implementation Plan approval

#### **Other Permit Streamlining**

- Fall 2004 – Fall 2007 – Pilot Environmental Results Program and Performance-Based Permit Program and develop statutory and/or rule revisions (funded by three year EPA grant)
- Spring 2005 – Winter 2005 – Rule revisions as needed to implement other APII permit process changes
- 2 ½ years from date of spending authorization approval – Information technology improvements

The Department is planning the following schedule for additional reports to the Legislature on permit streamlining:

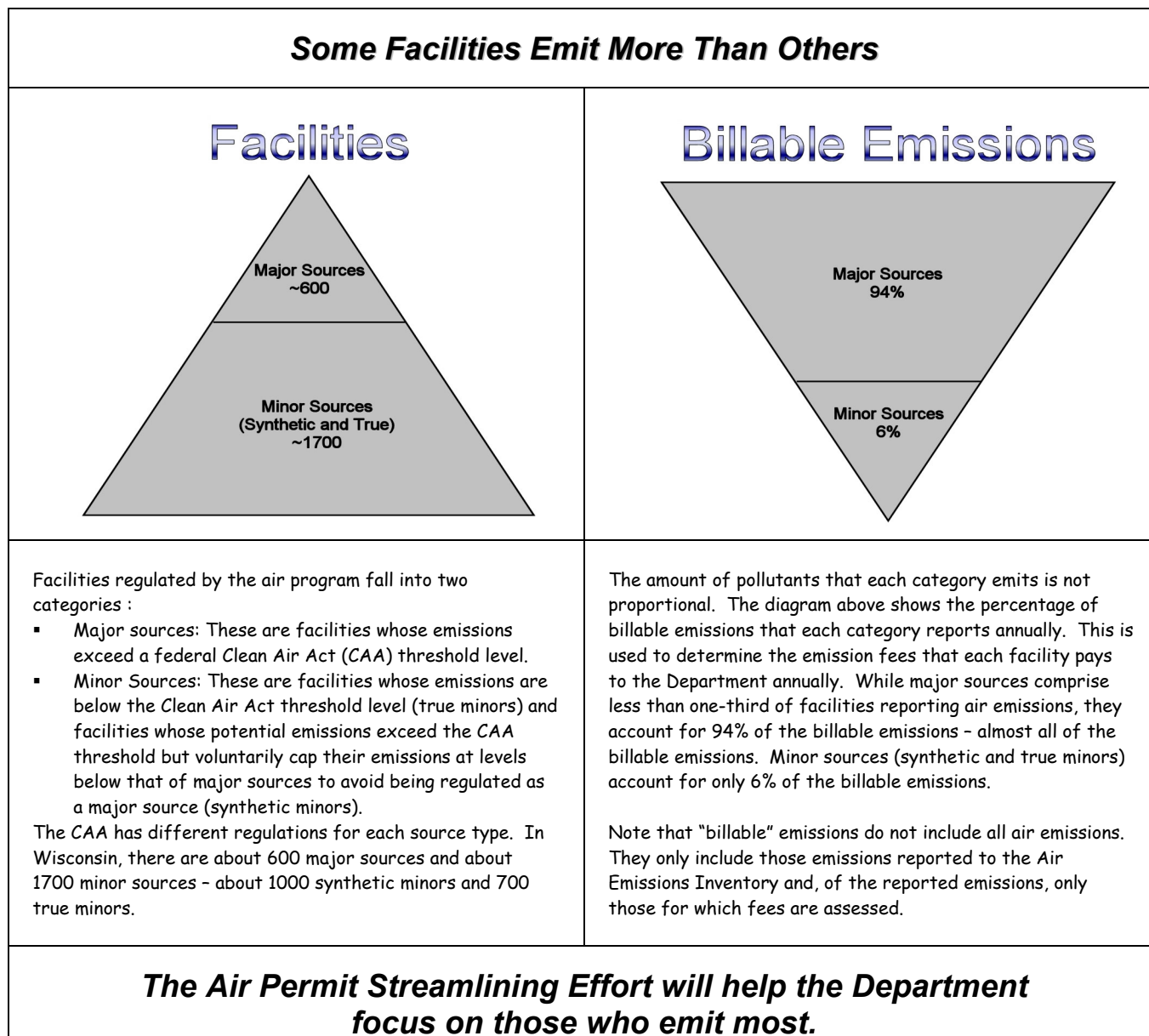
- March 2005 – Reports to the Legislature on Emissions Monitoring Practices and Application Requirements, as required by 2003 Wisconsin Act 118.
- January 2006 -- Final report on the Air Permit Improvement Initiative.



## II. Introduction

2003 Wisconsin Act 118 requires the Wisconsin Department of Natural Resources (Department) to streamline its air permitting process and to provide a report to the Legislature by September 1, 2004 on these air permit streamlining activities. This report provides the Department's recommendations on implementing the requirements of 2003 Wis. Act 118 regarding exemptions, registration permits, general permits, construction permit waivers and permit consolidation. In addition, the report includes an analysis of requirements in the federal Clean Air Act that limit the Department's ability to carry out 2003 Wis. Act 118, a description of how these limitations might be overcome, and a schedule for additional work and reports.

### **A. Current Status**



Currently, the air permit program utilizes individually negotiated construction and operation permits and, to a limited extent, exemptions and general operation permits, to meet state and federal Clean Air Act requirements. Often, individually negotiated permit reviews are quite complicated and require a fair amount of air program resources and company time to issue. Permits can apply to either the entire facility or to a specific "project" being undertaken at a facility, such as adding a new process line to the facility. A given facility can have more than one permit depending on the facility, the types of processes it has, and how frequently it undergoes modification.

## ***B. Air Permit Improvement Initiative (APII)***

In June 2003, the Department launched the Air Permit Improvement Initiative (APII) to help streamline the permitting process. The initiative grew out of the Department's desire to simplify the air permit regulatory system to be more responsive to the economic development needs of the state and to be able to continue to provide air quality protection and improvement with increasingly limited staff resources. The APII work laid the foundation for the framework described in this report.

As part of APII, the Department is going through a three phase process re-engineering approach to achieve significant improvements in the air permitting process:

- ***Assessment***

During this phase the Department conducted focus groups with regulated facilities, environmental groups, local economic development specialists, and Department permitting and compliance staff. Problems within the current system as well as customer needs were identified. In addition, APII staff interviewed 16 different state/local air permitting programs to learn how they manage their permitting programs and developed process flow diagrams for the existing permits processes.

- ***Vision of Change***

In this phase of process re-engineering, the Department developed a Vision for how the future air permits system should operate and identified Targets for Improvement (refer to **Appendix B**). The Vision and Targets describe a picture of the future that will guide the direction that the re-engineering process takes. The draft targets were reviewed by individuals who participated in the Assessment Phase focus groups and substantial changes were made based on that review.

- ***Redesign and Implementation***

The Department is currently in this third phase of process re-engineering. The elements of this phase include: deciding what components of the existing system to change, redesigning system elements, putting the elements together into the new system, rolling out the new system, and continuous improvement of the new system. The permit process has been broken down into the following areas:

- General/Registration Permits
- Individual Permits and Exemptions
- Alternative Regulatory Approaches
- Public Involvement

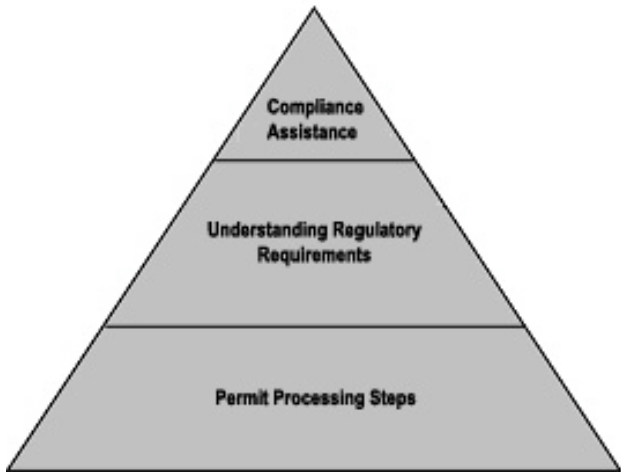
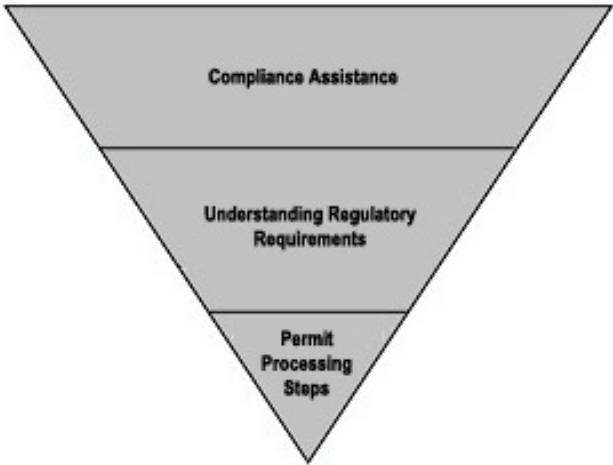
### ***Air Permits Program Vision***

*The Air Program will operate a permit process that ensures protection of the environment and public health by determining and clearly communicating regulatory requirements to all. This will be accomplished by:*

- *Making decisions in a clear, open, consistent and timely manner;*
- *Fostering an atmosphere of learning, innovation and efficiency;*
- *Working in cooperation with other Air Management Program activities;*
- *Proactively seeking process improvements;*
- *Providing for participation by citizens, communities, businesses and advocacy groups; and,*
- *Being fiscally responsive and responsible.*

- Information Technology to support the processes
- Management of the Permits System

Each of these areas has been assigned to a team that consists of Department permits/compliance staff as well as external stakeholders. Each team is responsible for redesigning their aspect of the permit process in a way that achieves the Vision and Targets laid out for the Air Permitting Improvement Initiative.

<b>Efforts Redirected From Process to Action</b>	
<p><b>Current Permit Process</b></p> 	<p><b>Re-Engineered Permit Process</b></p> 
<p>Currently, in issuing a permit, the department and regulated facilities spend a lot of time transmitting and manipulating data. Department Information Technology (IT) systems do not allow for efficient transmittal and processing of information. Facilities and their consultants are not always sure what information the department needs or the form it needs it in. The requirements that may apply to facilities are complex and often difficult for the facility and/or their consultant to understand. This in turn leads to confusion as to what/how requirements apply to a given source. Because so much time is taken in working through the requirements and processing the information, the department does not have the resources to actually work with facilities to help them understand their legal responsibilities and to provide them with compliance assistance as the facility attempts to meet the requirement.</p>	<p>In-reengineering the permit process, the focus will be on reducing the time it takes the department and the regulated facility to move through the permit processing steps. IT systems will be designed to allow facilities to easily understand what information they need to submit and make it easier for them to provide that data to the department. These systems will allow the department to process the information more efficiently so that permit decisions can be made in a more consistent and timely fashion. Time can then be spent with facilities ensuring that they understand the requirements that apply to them, what they need to do to comply with the permit, and providing assistance to them if they develop compliance questions or issues.</p>
<b><i>APII will help facilities increase their compliance and protect air quality.</i></b>	

### C. Stationary Source Strategy

The Stationary Source Strategy is an overarching framework to tie together a number of different regulatory tools into a comprehensive approach to help meet the following needs of industry, the public, and the Department.

- Industry: timely issuance of permits, increased operational flexibility, increased certainty related to permit content and issuance date, permit consistency, reduced recordkeeping and monitoring, and understandable permits.
- Public: improved air quality protection, increased transparency, understandable permits, and improved opportunities for public input.
- Department: improved air quality, reduced permitting and compliance workload, increased permit consistency, and a greater sense of environmental stewardship by industry and the public.

One focus of this framework is on permit requirements for sources with low and moderate levels of air emissions. A second major focus is to address more complex facilities with higher levels of emissions. It is important to note that the fundamental operating principle of the Air Permit Improvement Initiative is to streamline the regulatory structure of the permitting system, not to change the underlying applicable requirements or standards. For example, under the new process a source may be exempt from needing a permit, yet all applicable emission limits or standards must still be met. The Stationary Source Strategy was developed with input from external stakeholders and Department staff (refer to **Appendix C**).

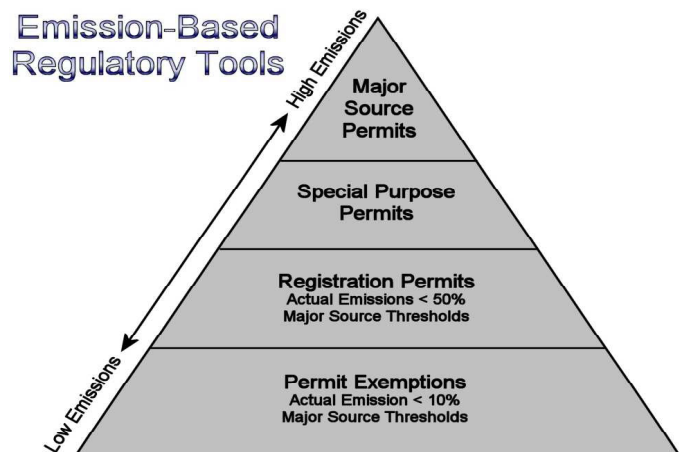
### D. What We Hope to Accomplish

The Stationary Source Strategy is built around several objectives. To the extent possible, we hope to:

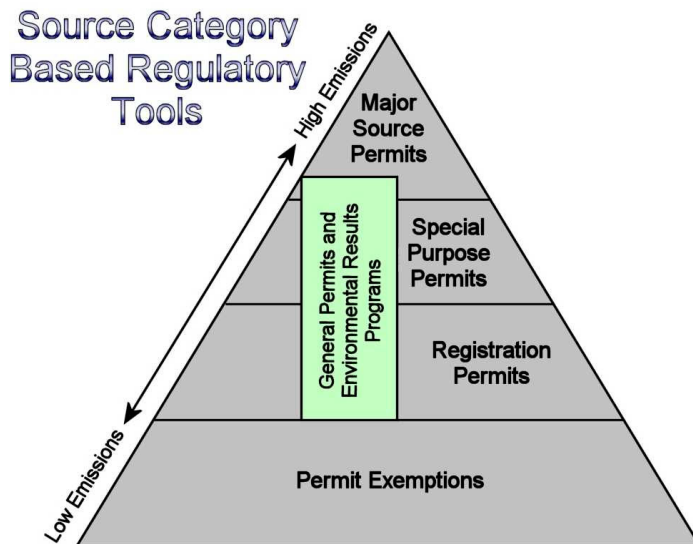
- Expand permit exemptions so that only projects and facilities with significant environmental impact or risk are required to go through the permitting process. This will allow the Department to focus its resources on the facilities with higher environmental risk.
- Replace individually negotiated permits with standardized ones. This will provide facilities with increased certainty and consistency and reduce Department permitting workload without significant risk to the environment.
- Replace process line requirements with facility-wide emission caps. This will provide facilities with increased operational flexibility without compromising air quality.
- Create incentives to reduce emissions and to go beyond compliance. This will promote a greater sense of environmental stewardship by industry while improving air quality protection.

### E. Conceptually, the Framework can be Divided into Four Categories:

- **Emission-based regulatory tools:** These tools target facilities or processes with low levels of emissions. These regulatory tools include permit exemptions and registration permits. The diagram to the right illustrates the tools that will be used on a triangle running from lowest air emissions at the base to highest air emissions at the apex.



- **Source category based regulatory tools:** These target facilities or processes that perform similar operations, emit similar air pollutants and have similar air regulations. These include Environmental Results Programs and general permits, depending on the level of emissions. This is illustrated in the diagram where source category based tools cut across emission levels.



- **Special purpose permits:** These target facilities with moderate to high levels of emissions and more complex or facility-specific operations. These include facility-wide emission caps, or bubbles, EMS-based permits, and simplified minor source permits. Emission caps are more likely to be attractive for facilities that need considerable operational flexibility; EMS based permits for larger, more sophisticated facilities; and simplified minor source permits for facilities that have relatively stable operations.
- **Major source permits:** These are a continuation of the existing permit program. This area is a major focus of the process re-engineering effort.

### III. Exemptions

#### **INTRODUCTION:**

A permit exemption is a release from the requirement to obtain a permit. Exemptions are written into regulations to address unintentional regulatory burdens that would not provide for any meaningful environmental gain. A facility that is eligible for an exemption does not need to obtain a construction or operation permit, however; they will need to meet all other applicable air quality requirements and standards.

#### **CURRENT USAGE:**

The Department uses permit exemptions in many different ways within the current structure of the Air Program. There are exemptions for both construction and operation type permits. The types of exemptions themselves are also divided into two categories. Specific exemptions apply to specific types of manufacturing operations, which meet certain criteria. General exemptions apply to all types of manufacturing operations with emissions that meet certain criteria.

The Department offers more than 30 specific exemption categories as well as one general exemption (See **Appendix D**.) To qualify for a specific exemption, a facility must operate a certain type of equipment as well as remain under certain thresholds on their emissions or operation rates. Some commonly known specific exemptions are those related to external combustion sources, painting and coating operations, and degreasing equipment.

A general exemption is an option for facilities based upon the emissions of certain types of air pollutants. In order to qualify for Wisconsin's current general exemption, a source must have maximum uncontrolled emissions that are below certain thresholds for a variety of pollutants. These pollutants include volatile organic compounds, particulate matter emissions, nitrogen oxides, sulfur dioxide, carbon monoxide, lead and other hazardous air pollutants.

#### **FUTURE APPROACH:**

As part of the Air program's streamlining effort, the Department is evaluating how to redefine the exemptions such that only projects and facilities that have, or will have, significant environmental impact or risk are subject to permitting requirements. This analysis includes a review of construction permit exemption levels in neighboring states (refer to **Appendix E**).

Under Wisconsin's current general exemptions, which are based on a source's maximum uncontrolled emissions, some projects and facilities are required to go through the permitting process even though they have very low actual emissions.

In addition, some of the exemptions are not equitable to all companies in Wisconsin. For example, Wisconsin construction permit rules currently exempt painting or coating operations whose actual emissions will not exceed 1,666 pounds of volatile organic compounds per month. This exemption is not available for other types of sources whose actual emissions are less than this same emission threshold, even though they pose no more (and sometimes less) of an environmental impact than a painting or coating operation.

To improve the exemptions the Department is investigating the following:

- Replacing or supplementing the existing operation permit general exemptions with actual emission-based general exemptions.

- Replacing or supplementing the existing construction permit general exemptions with actual emission-based general exemptions for the construction of new sources and potential emission-based general exemptions for the modification of existing sources.
- Adding specific exemptions where necessary and removing specific exemptions where they are redundant with a general permit exemption.

It should be noted that the operation permit general exemptions the Department is considering would only apply to facilities that are not otherwise classified as Title V sources. In addition, the construction permit exemptions would only apply to projects that are not subject to review under Prevention of Significant Deterioration (PSD) or Non-Attainment Area (NAA) rules.

The Department believes that the above changes will make permit exemptions more equitable and will help the Department utilize its resources for projects and facilities with the greatest environmental impact or risk.

Additional details on the exemptions program that the Department is investigating are listed below:

- To be able to take advantage of the general exemptions, a company or project's actual annual emission (or potential emissions for the modification of an existing source) would need to be less than 10% of all major source thresholds.
- The Department will generate an exemption letter if the facility meets the requirements and requests one.
- Exempt facilities may be required to file emission inventory reports. They would not be charged the annual emissions fees.
- Facilities would be required to keep records to show that actual annual emissions are below thresholds. If a facility can show maximum theoretical emissions are under the threshold then they would not be required to do record keeping.
- If a facility expects to exceed an exemption threshold, it would need to apply immediately for a construction and/or operation permit before exceeding the threshold. Exceeding an exemption threshold without a permit is considered a violation.

#### ***COST/BENEFIT ANALYSIS:***

It is anticipated that a revised exemption process would have benefits and costs to the Department, Wisconsin's business community and the environment. The following is an analysis of those identified.

#### ***Regulated Facilities:***

- Cost -- Facilities that may previously have gotten a permit to help them understand their application requirements will now have to figure out for themselves what requirements they need to meet or rely on fact sheets or trade associations for help.
- Benefit -- An exemption process such as this addresses several of the issues that the regulated community has raised, including establishing a level playing field and compliance certainty. We anticipate beneficial results in the following areas:
  - Easy initial step to determine compliance.
  - Less of a need for expensive consulting.
  - Ability to make changes with low actual environmental impact without going through a permit review.
  - Less reporting than if they had a permit.
  - No need for renewal exercise.

#### ***Environment:***



- Cost -- There is less public involvement because any new exemptions will only be public noticed once during the rule revision.
- Benefits --
  - The new exemption levels will allow the Department to focus its resources on projects and facilities with the greatest environmental impact.
  - New exemption levels provide an incentive for facilities to lower emissions in order to avoid the permit process, which should translate into better air quality.

Department:

- Cost -- With a revised exemption process, there will be an initial increase in the time spent on developing and implementing the changes.
- Benefit -- Once implemented, the new exemption system should operate more efficiently than the existing system. We anticipate savings in the areas of:
  - Less time spent determining if a facility is exempt.
  - Averted permit-drafting time.
  - No redundant costs associated with public notice.
  - No costs associated with renewals or modifications.
  - Minimal future training since the levels will not change.
  - Fewer compliance inspections due to some facilities no longer needing permits.

## IV. Registration Permits

### **INTRODUCTION**

A registration permit is a standardized document applicable to a group of facilities or projects with low actual and/or potential emissions. A registration permit is not a negotiated document, but instead contains only generalized requirements. Section 193 of Wisconsin Act 118 requires that the Department develop a registration permit program.

### **CURRENT USAGE**

Wisconsin does not currently utilize registration permits. A number of other EPA Region V states, including Indiana, Michigan and Minnesota, currently have registration permit programs. Minnesota, for example, has already issued over 1,900 registration operation permits.

### **FUTURE APPROACH**

The Department will be developing registration construction and operation permit programs. The Department is considering the use of the following types of registration permits:

#### Registration Construction Permit:

- Project has low emissions (levels still to be determined). For new construction, actual emissions will be looked at. For modifications, potential emissions from the modification will be looked at. Project complies with NR445 state hazardous air pollutant rules. Project is not subject to new source review under the Prevention of Significant Deterioration (PSD) or Non-attainment Area (NAA) programs. Project is not subject to a MACT standard or a non-allowed New Source Performance Standards (NSPS) (see list of allowed NSPS below).
- The Department has 15 days after receipt of a complete registration permit application to act on request.
- After compliance with permit conditions is demonstrated, project would be rolled into the facility's operation permit.

#### **Allowed New Source Performance Standards (NSPS)**

*(Sources subject to any of these standards are still eligible for a registration permit)*

- Small Industrial-Commercial-Institutional steam generating units
- Storage vessels for petroleum liquids
- Grain elevators
- Surface coating of metal furniture
- Industrial surface coating: large appliances
- Petroleum dry cleaners
- Industrial surface cleaning of plastic parts for business machines
- Hot mix asphalt facilities

#### Type A Registration Operation Permit:

- Facility actual annual emissions under 25% of major source threshold levels<sup>2</sup> for criteria pollutants and federal hazardous air pollutants. Facility complies with NR445 state hazardous air pollutant rules. Facility is not subject to a MACT standard or a non-allowed NSPS (see list above).

<sup>2</sup> For attainment area sources, the major source thresholds are defined as 100 tons per year of each criteria pollutant, 10 tons per year of each federal hazardous air pollutant, and 25 tons per year of a combination of all federal hazardous air pollutants). For nonattainment area sources, the thresholds can vary depending on the severity of the non-attainment area.

- Facility can make modifications without first obtaining a construction permit so long as they still qualify for a Type A or Type B registration operation permit. If the change causes the facility to no longer qualify for a Type A registration operation permit, but the facility does qualify for a Type B registration operation permit, the facility must apply for a Type B registration operation permit immediately. Facility must provide the Department written notification of the modification and may proceed with change immediately.
- Permit does not expire.

#### Type B Registration Operation Permit:

- Facility actual annual emissions under 50% of major source threshold levels for criteria pollutants and federal hazardous air pollutants. Facility complies with NR445 state hazardous air pollutant rules. Facility is not subject to a MACT standard or a non-allowed NSPS (see list above).
- Facility can make modifications without first obtaining a construction permit so long as they still qualify for a Type B registration operation permit. Facility must provide the Department written notification and allow for 15 day Department review of modifications.
- Permit does not expire.

#### Type C Registration Operation Permit:

- Facility actual annual emissions under 80% of major source threshold levels for criteria pollutants and federal hazardous air pollutants. Facility complies with NR445 state hazardous air pollutant rules. Facility is not subject to a MACT standard or a non-allowed NSPS (see list above).
- DNR oversight requirements for modifications at these facilities still to be determined.
- Recordkeeping, reporting and monitoring requirements will be greater for Type C permits because of the need to assure EPA that a system is in place to ensure that these sources do not become major sources.
- Permit does not expire.

The primary characteristics of all of the registration permits that the Department is proposing include:

- Streamlined application and processing - The application and issuance process for registration permits is much quicker than traditional permits. This is due to the fact that (1) registration permit applications forms are streamlined, (2) the permits are standardized templates, and (3) individual issued registration permits do not require public comment periods, which would otherwise add at least 30 days to the issuance time.
- Reduced administrative burden - Registration permits do not require on-going maintenance such as revisions, modifications and renewals. Once the registration permit is issued, it becomes permanent unless the source covered under the permit ceases to meet the eligibility criteria or the Department determines that the source is more appropriately covered under a different type of permit. Under a registration operation permit, a source may make any change without obtaining a construction permit as long as the source continues to qualify for the registration permit after the change.<sup>3</sup> Projects covered under a registration construction permit can continue to operate under that permit, unless the actual emissions from the project exceed the registration construction permit eligibility thresholds. If this occurred, the source would be required to immediately apply for a traditional construction permit.
- Generalized permit requirements - Registration permits contain generalized requirements that apply to all sources. Some examples of these types of requirements include:
  - Emission limits necessary for the source to maintain eligibility for the registration permit

<sup>3</sup> Sources may be required to notify the Department or allow for a 15 day Department review before making these changes.

- Required compliance with all applicable requirements in NR400-NR499
- Proper operation and maintenance of air pollution control equipment
- Monitoring and recordkeeping of air pollution control equipment operating parameters
- Recordkeeping sufficient to calculate actual annual emissions of all air pollutants
- Annual compliance certification reports

The proposed registration permit program will offer incentives for companies to reduce their emissions. To accomplish this, the Department is investigating the use of several tiers of registration operation permits. Benefits of falling into a lower tier registration permit (Type A) might include reduced recordkeeping requirements and/or reduced oversight of construction projects. Thus, facilities, that might otherwise fall into a Type B or C registration permit, would find it attractive to reduce emissions to qualify for a Type A registration permit.

In addition to these incentives, the benefits provided by registration permits themselves are an incentive for facilities that have actual emissions above the eligibility thresholds. To gain the flexibility and reduced burden offered by a registration permit, the facility may reduce emissions in order to qualify.

### **CHALLENGES**

Registration permits offer a number of benefits including increased timeliness, reduced administrative burden, and increased flexibility for facilities. On the other hand, registration permits present a compliance challenge for regulatory agencies as well as the facilities covered under these permits. Since all applicable requirements are not identified in the permits, the burden of determining these requirements is placed on the regulated facilities. The Department is investigating the feasibility of several methods for mitigating this burden. These methods include:

- The development of a "smart software" system which can identify probable applicable requirements based on information provided in registration permit applications
- Rule flowcharts which would help facilities determine what regulations apply to their operations
- Sector specific guidance or checklists which identify rules of concern for specific industrial categories

Even if all of these tools were in place, the Department believes that compliance inspections will be an invaluable tool for ensuring that facilities are aware of, and meeting, all applicable requirements.

Public participation on registration permits is typically minimal since individually issued registration permits are not open for the public to comment on. Therefore, it is essential that the public be involved early in the development of the registration permit templates, and take advantage of the public comment period for these templates. The Department will be seeking members that represent different public involvement groups on the team that will be developing the registration permit program.

### **COST / BENEFIT ANALYSIS**

Registration construction permits and registration operation permits have distinct costs and benefits; therefore, this analysis will address each type of permit separately.

#### **Registration Construction Permits:**

##### Regulated Facilities:

- Benefits - Streamlined applications, quicker permit issuance, increased certainty in when permit will be issued, decreased cost vs. traditional permits, increased flexibility
- Costs - Increased liability due to uncertainty of the applicable requirements for the project. Increased workload/cost to identify these applicable requirements. Because a registration permit is a single template for all facilities, facilities must comply with all applicable requirements exactly as written in the rules, and cannot negotiate permit conditions reflective of specific situations at the facility. If no modeling is done before permit issuance, there is the potential for increased costs to retrofit equipment to ensure compliance with air quality standards. If modeling is done before permit issuance, the facility may be required to conduct this modeling.

#### Environment:

- Benefits - Since permits require less Department time to issue, the Department can focus its resources on issues of higher environmental impact
- Costs - Potentially higher non-compliance rate of facilities due to the fact that not all applicable requirements are listed in the permit. If modeling is not done, there is no assurance that facility will not exceed air quality standards. No opportunity for public input on individually issued permits, therefore, the public cannot propose changes for reducing emissions in the permit/project.

#### Department:

- Benefits - Decreased construction permit workload, decreased administrative burden
- Costs - Increase in operation permit workload (if/when applicable requirements must be identified and included in the operation permit), potential increase in compliance workload, potentially increased time for the Department to help facility identify their applicable requirements.

### **Registration Operation Permits:**

#### Regulated Facilities:

- Benefits - Streamlined applications, quicker permit issuance, increased certainty in when permit will be issued, increased flexibility to make changes without going through construction permitting, reduced administrative burden (e.g., revisions and renewals)
- Costs - Increased liability due to uncertainty of the applicable requirements for the facility. Increased workload/cost to identify these applicable requirements. Because a registration permit is a single template for all facilities, facilities must comply with all applicable requirements exactly as written in the rules, and cannot negotiate permit conditions reflective of specific situations at the facility.

#### Environment:

- Benefits - Since permits require less Department time to issue, the Department can focus its resources on issues of higher environmental impact
- Costs - Potentially higher non-compliance rate of facilities due to fact that not all applicable requirements are listed in the permit. If modeling is not done, there is no assurance that facility will not exceed air quality standards. No opportunity for public input on individually issued permits, therefore, the public cannot propose changes for reducing emissions in the permit/project.

#### Department:

- Benefits - Decreased operation permit workload, decreased administrative burden
- Costs - Potential increase in compliance workload, potentially increased time for the Department to help facility identify their applicable requirements.

## V. General Permits

### **INTRODUCTION**

A general permit is a standardized document that contains all of the applicable requirements for a particular source category such as asphalt plants or flexographic printers. General permits are used to regulate emission units or facilities that:

- Perform the same or substantially similar operations,
- Emit similar air contaminants,
- Employ the same or substantially similar emission control systems, and/or
- Are subject to the same emission limitations and other standards and requirements.

### **CURRENT USAGE**

To date, Wisconsin has issued about 250 general operation permits, all to synthetic minor sources, with the majority of these being construction aggregate plants (crushers). Wisconsin currently offers general operation permits for crushers, ethylene oxide sterilizers, and small heating units. An example of a general operation permit currently used by the Department can be found in **Appendix F**.

### **FUTURE APPROACH**

*Categories under consideration and their priority:*

The Department will be developing general construction permits and general operation permits for a number of industrial source categories and process types. The source categories/process types currently under development or being considered for development include:

- Crushers (general construction permit)
- Small heating units (general construction permit)
- Printers:
  - Lithographic
  - Screen printers
  - Digital printers
  - Flexographic printers
  - Rotogravure printers
- Asphalt plants
- Coating lines
- Generators
- Natural gas compression station turbines

These source categories/process types were chosen based on a review of the number of projects or facilities that could potentially utilize the permits, as well as an assessment of the feasibility of developing a general permit capable of covering the operations. In addition to these categories of sources, statutes allow for companies to petition the Department to develop general permits.

Based on the number of sources that could potentially utilize each type of general permit, and the expected level of effort necessary to develop each type of general permit, the Department has preliminarily set the following priority for development of the general permits:

- Phase I: Crushers, Small heating units, Printers, Coating lines
- Phase II: Asphalt plants



- Phase III: Generators and natural gas compression station turbines
- Phase IV: Others as needed

#### *Types of general permits:*

The Department is investigating the development of three types of general permits, "Type A" general operation permits, "Type B" general operation permits, and general construction permits. Type A general operation permits would be used for non-Part 70 sources, and would not expire. Type B general operation permits would be used for Part 70 sources<sup>4</sup>, and would expire after 5 years. A facility covered under either type of general operation permit would be able to make modifications as long as they did not impact compliance with the permit conditions and the change was not subject to review under Prevention of Significant Deterioration (PSD) or Non-Attainment Area (NAA) rules. General construction permits would be used to authorize the construction or modification of sources. After a facility had demonstrated compliance with the requirements of the general construction permit, the permit would become a permit to operate the source.

The Department may also consider developing a "superior environmental performance" general operation permit that would be available to facilities that chose to reduce emissions beyond required levels in exchange for reduced requirements in other areas, such as reporting.

#### *Eligibility criteria:*

Each general permit developed will have a list of eligibility criteria. The criteria might include things such as industrial/process category type, emission unit size, required air pollution emission control equipment, applicable requirements (e.g., New Source Performance Standards), emission levels, and/or the use of best management practices.

#### *Permitting process:*

To apply for a general permit, a facility would complete the permit application forms specifically designed for that industrial source category/process type and submit them to the Department. Facilities will have the option of applying for general permits online or filling out the forms off-line and sending them to the Department. As required under Act 118, the Department, within 15 days of receipt of the general permit application, would provide the applicant with:

- Written notice of the Department's determination that the source qualifies for coverage under the general permit,
- A written description of any information that is missing from the application for coverage under the general permit, or
- Written notice of the Department's determination that the source does not qualify for coverage under the general permit, specifically describing the reasons for that determination.

Draft general permit rules (**see Appendix G**) include a clause that allows the Department to regulate a facility or project under a different type of permit if the Department determines that the source would be more appropriately regulated under that type of permit. For example, if the Department identified a high rate of non-compliance for sources with a category of general permits, the Department might choose to regulate those sources using an Environmental Results Program (ERP) or other type of regulatory tool that focuses more on compliance assistance.

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<sup>4</sup> A Part 70 source is a facility whose emissions exceed any major source threshold. For attainment areas, the major source thresholds are 100 tons per year of any criteria pollutant, 10 tons per year of each individual federal hazardous air pollutant and 25 tons per year of a combination of all federal hazardous air pollutants. For non-attainment areas, the thresholds can vary depending on the severity of the attainment area.

## **CHALLENGES**

One of the drawbacks of the current general permits in use by the Department is that, in many cases, they do not cover all of the operations at a facility. Therefore, permittees may need multiple permits to cover their facility's operations. To address this, general permits must be designed to be easily combined with other air pollution control permits so that a facility's operations can be covered under a single permit document.

Facilities have concerns about the complexity of certain general permits currently in use by Wisconsin. These permits have lengthy conditions and requirements that may or may not apply to the regulated facility, depending on the individual operations at the facility. There are several ways this can be addressed. One way would be to have a permit writer review the general permit applications and pick out portions of the general permit that actually apply to the facility. Another method would be to develop more specific general permits. For example instead of developing a single general permit for asphalt plants, develop multiple general permits depending on the type of emission controls (e.g., fabric filter vs. wet scrubber) and choose the one that fits the facility to be permitted.

Another concern about general permits is that they are not easily understandable/readable. The Department will strive to draft the permits using industry terminology and plain language, to the extent possible. To this end, the Department will be recruiting industry representatives to help in the development of the general permit templates.

Although the public is given an opportunity for comment on the general permit templates before they are first used, there is no public participation on the issuance of these permits to individual sources. Therefore, it is essential that the public be involved early in the development of the general permit templates. To this end, the Department will be requesting public involvement on the team that will be developing the general permits.

## **COST / BENEFIT ANALYSIS**

### Regulated Facilities:

- Benefits - Streamlined/industry-specific applications, quicker permit issuance, increased certainty in when permit will be issued, decreased cost vs. traditional permits, increased flexibility (ability to construct without a permit if general permit covers the project), increased certainty of what permit conditions will be, level playing field across industrial sectors
- Costs - No individual negotiation of specific conditions. In some cases, increased complexity of permit documents.

### Environment:

- Benefits - General permits require less Department time to issue, therefore, the Department can focus its resources on issues of higher environmental impact.
- Costs - Opportunity for public input is limited to developing and commenting on the template for the general permit. The public cannot propose emission-reducing changes on individual permits or projects. Only a generalized air quality modeling analysis is done for a general permit - modeling of individual facilities or projects to be covered under a general permit are not done.

### Department:

- Benefits - Decreased permit workload, decreased administrative burden
- Costs - Development time for general permit templates.

## VI. Bubble Permits

### **INTRODUCTION**

The word “bubble” conjures up the image of a round shimmering surface. Imagine that a much larger version of that surface encloses a manufacturing facility. Inside the bubble, the facility can make operational changes, try new manufacturing techniques, and respond to the needs of its clients and its market. Outside the bubble however, air pollution emissions cannot exceed their capped levels.

Much like the shimmering bubble, a bubble permit would cap overall emissions levels seen on the outside of the facility but would be less restrictive on the individual operations inside the facility. The bubble permit is especially attractive to facilities that make a variety of products for a variety of clients. Usually referred to as “job shops,” these types of facilities often need to make small changes in operations to meet client specifications and win contracts. If such an operational change is not allowed by the facility’s current permit, it must apply for and receive a new permit before it can make any operational changes. Job shops typically apply for construction permits once or more per year. The administrative burden for the facility as well as for the Department can be quite high yet these permit modifications often result in very few changes from the original permit. The bubble permit will be designed specifically for these small to medium sized job shop facilities, to allow for operational flexibility while maintaining protection of the environment.

### **CURRENT USAGE**

Wisconsin has issued a number of bubble permits under the Environmental Cooperation Pilot Program. Four facilities owned by Northern Engraving are currently operating under bubble permits. These facilities are all non-major sources, i.e., their emissions are all less than 100 tons per year. The Department is also working on a Cooperative Environmental Agreement for one major source, 3M Company. This facility is still in the process of negotiating its bubble permit. Under the pilot program, these companies, that had shown a commitment to superior environmental performance, negotiated with Department personnel to come up with mutually beneficial environmental and regulatory commitments.

Take Northern Engraving’s permits as an example. These facilities are considered job shops because they use a variety of paints and coatings on a variety of substrates for a variety of clients. None of the facilities is a part 70 source under the Clean Air Act. That is, their potential emissions have not exceeded 100 tons per year. This company agreed to cap emissions of volatile organic compounds and hazardous air pollutants at levels 15% lower than what would have been required to be a minor source under traditional permitting. In return, the Department wrote permits with variances from certain line-by-line emission limitations as well as a variance from the requirement to get a permit before commencing construction.

This arrangement has been mutually beneficial for the company and the Department. The company has received the operational flexibility that allows it to quickly meet client needs. They also have a simplified permit with simplified recordkeeping requirements. Although Northern Engraving must eventually receive construction permits for new emission sources, they can begin construction and start operating new equipment before the construction permit is issued. This has resulted in a reduction in administrative workload for both the Department and the company because Northern Engraving only submits permit applications for new sources after they’ve won contracts and know for certain that they will change operations. Before the agreement, the Department would often review construction permit applications that were never issued because the company only submitted the applications to try to anticipate business needs.

Also, because the bubble permits greatly reduced the complexity of compliance demonstration methods, it has become much easier both for Northern Engraving to determine that its facilities are in compliance and for Department personnel to inspect these facilities and determine compliance as well.

The Northern Engraving bubble permits were not issued without difficulty, however. For instance, whenever the Department grants a variance from its rules, the time consuming process of obtaining a source specific State Implementation Plan (SIP) revision from EPA must be accomplished. In order to be able to use bubble permits more frequently, the Department will pursue a streamlined SIP revision process with EPA.

Another potentially time consuming part of the Northern Engraving permits was that the Department issued a complete traditional synthetic minor source permit as a backup permit to the bubble. The Department decided to do this because the concept of the bubble permit was new and, if the facility did not live up to the requirements of the Cooperative Environmental Agreement it felt that it was important to have a federally enforceable document immediately available to fall back on. Since the bubble permit has been issued, the Department has more confidence in the ability of the Company to live up to its agreement and more confidence in the bubble permit to protect the environment.

Currently, the State of Wisconsin, through the recently enacted Green Tier legislation, can allow for facilities to form contracts with the Department. Under Green Tier, the Department could issue bubble permits to facilities as long as they have an Environmental Management System, show superior environmental commitment, and work cooperatively with citizen groups. In return, Green Tier also offers variance from some Department rules and regulations in order to help businesses more effectively and efficiently meet their needs.

### ***FUTURE APPROACH***

As part of the Stationary Source Strategy, the air program is proposing to write more bubble permits. In addition to Green Tier, the Department is proposing to design its permit process to include the issuance of bubble permits as a "normal way of doing business". The following reflects the Department's current thinking about this approach.

Who is eligible: Bubble permits would be available to any facility willing and able to cap emissions below major source thresholds. Exactly how emission caps would be set at participating facilities still needs to be developed. It is expected that facilities would take caps at some percentage of their current potential emissions. DNR is proposing that caps be established based on the operations at the facility and in no case would be greater than 80% of the major source threshold. For example, this could result in emissions of 79 tons per year VOCs from an attainment area painting facility, rather than the 99 tons per year needed to make it a non-major source under the existing process. Capping emissions below 80% of major source thresholds has compliance workload implications for the Department as well as environmental benefits. The first bubble permits are expected to target facilities whose only significant pollutants are volatile organic compounds (VOCs). The Department will continue working with facilities, EPA and the public to expand the bubble concept to other pollutants in the future.

How does the Tool Work: The Department is proposing to use the Northern Engraving bubble permit as its model for future bubble permits in Wisconsin. While not all the requirements of the Environmental Cooperation Pilot Program would be retained, the proactive public involvement piece will be a part of the bubble permit process. A participating facility would also have to show that it is capable of making and documenting reductions in emissions to stay under its cap either by having an environmental management system or by some other management process in place.

The Department, interested parties and the facility would need to go through a negotiating process in order to set emission caps, emission reduction goals, and appropriate recordkeeping and monitoring requirements, and to figure out what regulatory variances can be obtained.

### **NEW CONSTRUCTION**

Industry has expressed that one of its most important needs is operation flexibility. Especially for the job shop, industry needs to be able to make changes to its process in a timely manner in order to win contracts. A variance from the requirement to obtain a construction permit prior to commencing construction would be a part of every bubble permit. However, the specific procedures for proceeding with a new project would likely vary with each bubble permit. All facilities will need to demonstrate that their capped emissions are not exceeded and ensure that ambient air quality standards for pollutants other than VOCs will be met before they can begin a new project. The Department will need to work with EPA to come up with acceptable yet streamlined construction permitting approval processes.

### **PUBLIC PARTICIPATION**

Public participation in the bubble permit is expected to be more proactive than it is under the current system. In addition to the traditional notice and public comment for the initial bubble permit, the facility is expected to form an interested parties group that would be notified in advance of any proposed operational changes. The group will have a certain level of comfort with proposed changes because it will have been kept informed of the business and environmental goals of the facility and may even be of help in advocating for the facility. This approach to public involvement is necessary because of the probable reduction in construction permit applications at bubbled facilities and the associated reduction in newspaper notices and opportunities for comment and hearings currently available whenever a construction permit is reviewed.

This public participation model was used in the Environmental Cooperation Pilot Program. Although it was met with some resistance early in the process, both public participants and participating industries have become progressively more satisfied with the arrangement. It is hoped that such partnerships will eventually become the norm in our state.

### **CHALLENGES**

There are challenges ahead in seeing bubble permits to reality. Some work that the Department will need to pursue in order to efficiently use bubble permits are:

- Write rules to allow for variances outside the Green Tier umbrella.
- Obtain the ability to use a streamlined construction permit approval process.
- Work with EPA to get flexibility on some compliance demonstration requirements.
- Work with EPA to craft a streamlined Source Specific SIP revision process.
- Figure out how to set emission caps fairly and consistently.
- Decide on procedures to be used when a facility wants to expand beyond its cap or finds it cannot maintain its emission cap.

### **COST/BENEFIT ANALYSIS**

#### Facilities:

- Benefits -- Regulatory relief. Ability to make changes without as much of an administrative burden or long time lag. Ability to use the best approach for the unique situation to reduce emissions. Credit for pollution prevention. Simplified recordkeeping.
- Costs -- Emissions caps lower than what would have been required under traditional permits. If monthly records were allowed to replace daily records, a facility would not know if a violation had occurred until the end of the month rather than the end of the day and thus may be subject to enforcement actions.

#### Environment:

- Benefit – Better environmental stewardship by business. Long term environmental planning. Lower potential to emit.
- Cost - Elimination of daily records makes it a more difficult to forecast when a violation might occur. If monthly records are allowed to replace daily records, a violation may continue to occur until the end of the month rather than the end of the day.

#### Department:

- Benefits – Fewer construction permits and permit revisions would need to be written reducing the Department's administrative costs. Simplified permits are easier and less time consuming to inspect. Capping emissions below 80% of major source thresholds helps the Department meet its inspection commitments.
- Costs – Elimination of daily records makes it a more difficult to forecast when a violation might occur.

## VII. Individual Permits

### **INTRODUCTION**

An individual permit is a document that contains all of the applicable air requirements for a particular facility. Facilities to be regulated via individual permits are the more significant sources. These facilities include those classified as major sources, and the remaining synthetic and true minors that will not be eligible for registration or general permit options. Individual permits will be significantly streamlined from how they are today, however.

#### **A. Future Approach:**

The streamlined process for developing individual construction and operation permits will be focused on providing value to both the regulated facility and the public. Facilities regulated under this scenario can expect to see efficient, clearly defined, and beneficial interactions with the Department; consistent requirements across similar facilities; and an appropriate level of control technology, monitoring, compliance demonstration and reporting requirements. Permits for sources within one facility will be consolidated. Business goals and environmental goals both will be viewed as supportable by the permit program.

There are four elements to improving the process for individual permits:

##### **1. Making Improvements to the Process and Roles.**

This includes designing the combined construction and operation permit process; defining how interactions between the Department and the regulated facility can be optimized; and defining responsibilities of the Department and the regulated facility.

##### **2. Making Improvements to Permit Requirements.**

This includes developing standardized control technology, monitoring, compliance determination, compliance maintenance, and recordkeeping requirements; defining when and where modeling should be done and who should do it; and recommending changes in administrative rules and SIP requirements to reduce administrative complexity. Improvements will be determined based on an evaluation of federal requirements and what other states are doing.

##### **3. Developing a Standardized and Documented Process**

This includes developing a standardized process for producing permits; constructing decision trees to determine which permit requirements apply; defining application requirements; developing work procedures and guidance materials for both Department staff and facilities; and developing functional permit document formats.

##### **4. Developing Information Technology (IT) Tools**

This includes developing IT tools for both the Department and regulated facilities to use for: determining exemptions, submitting applications and reports, determining permit requirements, producing permit documents, and making guidance materials available.

The first two steps in the project are to 1) develop the combined construction and operation permit process and 2) to meet with industry sectors to determine appropriate monitoring and compliance requirements and to identify provisions in rules and requirements that could be revised to streamline the permitting process. Over the next 3 months, additional workgroups will be pulled together to evaluate the use of modeling, discuss requirements in non-attainment areas, and provide feedback on the standardized process and guidance materials. In addition to the industrial sector discussions,

meetings with all interested stakeholders will be held over the course of the project to solicit feedback on cross-sector recommendations and issues requiring rulemaking.

### **B. Individual Permit Streamlining Schedule:**

Although the standardized and automated permit process will not be functional until January 2006, standardized monitoring, compliance, and recordkeeping requirements can be implemented as early as April 2005, depending on whether or not they require rule changes. Following is the schedule for providing written reports, recommendations, and rule revisions to the legislature, as required under Section 231(1)3. of Act 118:

January 2005	<b>Consolidating permits:</b> submit recommendations and proposed rule revisions
March 2005	<b>Monitoring requirements:</b> submit recommendations, proposed rule revisions, and an analysis of federal requirements and best practices used by other states for monitoring, compliance demonstration, compliance maintenance, and recordkeeping requirements
March 2005	<b>Modeling:</b> submit recommendations, proposed rule revisions, and an analysis of federal requirements and best practices used by other states related to Wisconsin's use of modeling to determine compliance with ambient standards
March 2005	<b>Reduce administrative complexity:</b> submit recommendations, proposed rule and SIP revisions, and an analysis of federal requirements and best practices used by other states, to reduce the administrative complexity of Wisconsin's permit program
March 2005	<b>Application requirements:</b> submit recommendations, proposed rule revisions, and an analysis of federal requirements and best practices used by other states related to permit application requirements
March 2005	<b>Prioritization schedule:</b> submit proposed schedule for prioritizing rule revisions related to consolidating, monitoring requirements, modeling, reducing administrative complexity, and application requirements
January 2005 – June 2006	<b>Revise rules</b> according to prioritization schedule
April 2005	<b>Begin including in permits</b> those best practices for monitoring, compliance demonstration and recordkeeping, which don't require rule revisions
April 2005 – November 2005	<b>Develop work procedures,</b> guidance materials, and permit language, and automated tools
January, 2006	<b>Begin consolidating permits and implementing</b> monitoring, modeling, and other changes in permits according to rule revisions.

### **C. Permit Consolidation:**

As required under Section 231(1)2. of Act 118 the Department, in consultation with regulated facilities, is developing recommendations on how best to consolidate the construction and operation permits for all sources within a facility.

Permit consolidation was also raised as an issue by the Environmental Protection Agency in the Notice of Deficiency filed against Wisconsin's air permitting program. The approach taken by the Department is to first resolve the issues raised by EPA, in order to meet the deadlines to resolve the

Notice of Deficiency. Administrative rule revisions that are necessary to resolve these issues are being developed and statutory changes may be required. . Those statutory and administrative rule revisions are related to strengthening the continuity of permit requirements between construction and operation permits.

Concurrently with that effort, the Department has also begun discussions with regulated facilities to more fully consolidate the construction and operation permits for a facility into one permit. The Department is proposing the following schedule for consolidation:

January, 2005	Submit recommendations, proposed rule revisions, and an implementation schedule to the legislature
January, 2005 – June, 2005	Revise rules
June, 2005 – November, 2005	Develop work procedures, guidance materials, and permit language
January, 2006	Begin consolidating permits according to the implementation schedule

#### ***D. Construction Permit Waivers:***

Wisconsin Act 118 directed the Department to promulgate rules to allow a person to commence construction prior to obtaining a permit upon showing that it was necessary to avoid undue hardship. The Act also gives the Department the authority to grant waivers for permits prior to construction on a case-by-case basis.

As of August 20, 2004, the Department had developed guidance on granting waivers and had received 5 requests. Three of these were approved, one was denied and one was withdrawn. The denial was related to Clean Air Act requirements that required limitations in a permit in order to avoid Federal nonattainment area major source permitting requirements.

The plan for rule development is to gather experience from the case-by-case waivers, which would be used to establish the criteria for rule drafting.

## VIII. Alternative Approaches

A primary reason the Air Permit Improvement Initiative came about was to address concerns over the amount of effort and time involved in air permitting in relation to the resulting environmental improvement. Like many state and local environmental agencies, resources at the Department are declining and this trend is likely to continue for the foreseeable future. There is also strong industry interest in a more comprehensive approach to environmental regulation. All of these trends provide an incentive to think innovatively and develop alternative approaches.

The Department submitted a grant proposal to EPA for an innovative project that would apply both Environmental Management Systems (EMS) and Environmental Results Program (ERP) approaches across an entire industry sector. The project's goal is to reduce the air permit burden while providing regulatory flexibility to and improving the environmental stewardship of industry participants. The objective is to develop this proposal in such a manner that it could be applied to other industrial sectors and include other environmental media. These approaches are described in this chapter.

### ***A. Environmental Results Program (ERP)***

#### ***INTRODUCTION***

The Environmental Results Program (ERP) is an innovative approach to solving high-priority environmental problems in industry sectors largely comprised of small businesses affected by regulations but not previously targeted for compliance and enforcement efforts. The ERP approach combines technical assistance, self-certification, inspections, and statistically based performance measurement in order to reduce the environmental impacts of business. ERP relies upon a statistical approach to enhance confidence in the reliability and accuracy of performance measurement data where states do not have the resources to inspect every facility. The data can then be used for many purposes, including strategically targeting agency resources to problem areas and, ultimately, providing accurate evidence of performance improvements and the success of the program.

#### ***CURRENT USAGE***

ERP was pioneered and originally implemented by the Massachusetts Department of Environmental Protection (MA DEP). Massachusetts and other states are adapting ERP to address continually emerging environmental priorities.

#### **ERP's in place or under development:**

<b>Agriculture/Feedlots</b>	<b>Dry Cleaners</b>
Minnesota*	Massachusetts
<b>Autobody/Auto Repair</b>	Michigan*
Delaware	<b>Printers</b>
District of Columbia	Massachusetts
Florida	Wisconsin*
Maryland	<b>Underground Storage Tanks</b>
Rhode Island	Georgia
Maine*	Rhode Island
Virginia	Tennessee
<b>Auto salvage yards</b>	<b>Stage II Vapor Recovery</b>
Florida	Massachusetts
Maine	Rhode Island
Rhode Island*	<b>Retail Gasoline Sales Sector</b>
	Vermont*

\* States with recent State Innovation Grants awarded for ERP development.



The ERP approach integrates several compliance assurance approaches into an effective, synergistic package that can supplement a state's traditional compliance inspection program, including:

- *Compliance assistance* from the agency through outreach and innovative workbooks;
- *An annual self-certification of compliance* by companies to increase self-evaluation and accountability and to provide additional performance data;
- *Randomly selected inspections* that provide statistically valid performance measurement and enable the regulatory agency to make inferences about a sector's compliance with specific environmental requirements. Randomly selected inspections, like any other inspections, also deter facilities from failing to comply with the law;
- *Targeted inspections* enhance the deterrence effect specifically among facilities that show indications of non-compliance on their certification forms.

The self-certification and inspection process is repeated at regular intervals to maintain facility performance levels and confidence in an agency's understanding of those levels. Each step of the ERP process described here (except for the targeted follow-up inspections) has statistical aspects that relate to the agency's ability to conduct statistically valid performance measurement.

Using the ERP in place of other regulatory tools provides a measure of flexibility for both the regulatory agency as well as the facility. Many of the regulatory standards set under ERP are performance, rather than activity, based. Performance-based standards provide facility operators with greater flexibility to decide on the best approaches to meeting regulatory standards. One measure of flexibility in Massachusetts' ERP Program was that facilities participating in the ERP were allowed to avoid construction permit requirements for certain process changes. Rather than having to wait for MA DEP to pre-approve an operational change, the facility manager could simply notify MA DEP within 60 days after making the change.

### ***FUTURE APPROACH***

Wisconsin has been awarded a State Innovation Grant from US EPA to help develop their first ERP. As an integrated program of ERPs for small businesses and an EMS/Performance Based Permit for large businesses, the Department chose to focus on the printing sector. The grant will provide a total of \$200,000 over the next three years to cover the resources it will take to develop these programs.

If the Department decides to make ERP a permanent tool, the Department will need to determine which sectors are best served by ERPs not only in the short term, but also long term. Development of an ERP now can help those small business sectors with certain federal MACT standards that have compliance due dates three to five years from now.

A very appropriate in-state model from which we can draw would be the Cooperative Compliance Program (CCP). This program arose from an industry request for further assistance to understand and comply with changes to the stormwater regulations. Under this program, a local trade association takes an active role in helping its members maintain compliance by providing training and professional assistance. The CCP also audits its members and submits compliance reports to the Department. Participation in the CCP is voluntary, which is different than an ERP, however; a strong enforcement presence within the regulating agency is very important for the process to work well.

### ***Public Participation***

ERPs change the way the public is involved by including interested parties in the process of development of a program as well as gaining access to more detailed information on the compliance status of industry sectors in their area. The statistical analysis provided by ERP results will provide more useful information on trends and areas for future compliance work when compared to existing permit public notices and preliminary determination documents.

## CHALLENGES

US EPA's Area Source Requirements may drive the need for the Department to find a way to more easily deal with sectors of very small businesses that have a large number of businesses spread out over wide area. US EPA will be developing 55 new regulations under their Area Source Standards. The area source standards are intended to regulate the hazardous air pollutants (HAPs) from businesses that are below the major source levels for emissions of the federal HAPs but contribute to high levels of HAP emissions when taken as a whole business sector. One of those regulations that already exists is the standard for Dry Cleaners. While the standard has been effective since early 1990s, so far the Department has not had the resources available to issue permits for any Dry Cleaner in Wisconsin and has only just begun inspections targeted at the sector. This is a sector with approximately 350 sources. Some of the new regulations will affect sectors like Auto Body Refinishing shops, which is a sector that may have around 1500 sources in Wisconsin. Given the staffing levels in the Air Program, they cannot efficiently manage regulating a number of sectors with hundreds or even thousands of sources in each sector. A new way of doing business will need to be adopted by the Department to handle that load.

There may need to be statutory language authorizing an ERP program as an alternative regulatory tool to an air permit for appropriate categories of sources. However, some states have been able to get the ERP started through administrative rules only.

## COST/BENEFIT ANALYSIS

A report written by the National Academy for Public Administration (NAPA) in June 2000<sup>5</sup> provided an evaluation of the costs and benefits to facilities, the environment, and the regulatory agency. Excerpts are provided here. The Department expects similar costs/benefits for Wisconsin.

### Regulated Facilities

- Benefits -- "By replacing permitting requirements with performance-based regulatory standards and annual self-certifications, ERP provides businesses with increased flexibility in two forms. First, many of the regulatory standards set under ERP are performance, rather than activity, based. Performance-based standards provide facility operators with greater flexibility to decide on the best approaches to meeting regulatory standards. Second, so long as exemptions are provided, owners/operators would have flexibility under ERP to make certain process changes that would have previously required pre-approval due to individual permit requirements. Avoiding construction permit requirements can save significant time (and thus cost) in making process changes because, rather than having to wait for agency review and approval the business can just provide notification of the change."

Survey results from the NAPA report provide some quotations from MA businesses regarding their thoughts on ERP:

**"Opportunity to be a good environmental citizen.** "I sleep better knowing I am in compliance with the regulations."

**More effective understanding of environmental expenditures.** "...with the certification requirement, now he (the boss) recognizes how he has to spend the money" (Massachusetts Printer).

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<sup>5</sup> Prepared for the National Academy for Public Administration by Susan April and Tim Greiner, "Evaluation of the Massachusetts Environmental Results Program," June 2000.

**Evenhandedness.** ERP helps 'level the playing field' between those complying with regulations and those knowingly or unknowingly skirting their regulatory responsibilities.

**Reduced workplace exposures** of perchloroethylene for dry cleaners. The ERP self-certification process requires weekly leak checks.

**Clear Accountability.** ERP directly mandates that a high-ranking facility official certify compliance with environmental requirements. In doing so, ERP establishes a clear "chain of command" for environmental requirements at the facility. In addition, businesses feel that ERP provides them reassurance because their environmental requirements are communicated to them and, in doing so, facility operators can better internally manage their environmental obligations."

- **Costs:** Because many of the sources that may be targeted through ERPs have had little in the way of formal compliance demonstration to follow through on, the burden of reading through the workbook and completing and submitting the self-inspection checklist and certification will be an added cost to their operations. Some facilities in Rhode Island were reported as having hired consultants to help complete their self-inspections, but fees being charged were fairly low – just a few hundred dollars.

### Environment

- **Benefits:** Where a sector has otherwise been ignored by regulatory agencies or just not addressed previously due to lack of resources, any attention to ensure their compliance with environmental regulations will benefit the environment.
- **Costs:** None expected.

### Department

- **Benefits:** When it comes to future area source MACT standards, if states are still mandated by US EPA to implement those programs outside of Title V fees then having ERPs in our tool box will allow the work to get done more efficiently. Considering the size and sophistication of the types of businesses to be regulated under the area source MACTs, the ERP is a more appropriate tool to use than the existing program of permits and inspections.
- **Costs:** Outcomes from the grant program will help to measure the costs to the Department. From the MA perspective:

"To accurately judge ERP's cost-effectiveness, it would be necessary to compare ERP's costs and relative results to the costs and results of operating a conventional regulatory program for the three sectors. In addition to requiring industry to self-identify and self-correct non-compliance, ERP is unlike conventional regulatory programs in that it uses data to decide which sectors could benefit the most from outreach and other resource investments. Because of these differences, it is difficult to compare ERP resource requirements to the level of effort that would be needed for a more conventional permit, compliance, and enforcement program that achieved comparable performance results. In their case, MA DEP believes that implementing a fully staffed conventional regulatory program for the three ERP sectors they did first would have required considerably more resources to implement than what they found necessary to implement ERP."

**For More Information:** To review the Massachusetts Printer ERP documents you can go to the link: "<http://www.mass.gov/dep/erp/erpforms.html>". On that page, scroll down to the Printers section and look for the files named "2004 Printer Certification" and "Certification Workbook for Printers," which are the key documents a facility would use to demonstrate environmental regulatory compliance to the agency."



## ***B. Environmental Management System Performance Based Permits***

### ***INTRODUCTION***

An Environmental Management System, or EMS, is a system that a business sets up to make sure that its impact on the environment is a part of every business decision. It is a continual cycle of planning, implementing, reviewing and improving the processes and actions that an organization undertakes to meet its business and environmental goals. This “plan-do-check-act” model is designed to drive continual improvement.

An EMS based permit uses the structure of an Environmental Management System as the holder of a facility’s environmental legal requirements including emission limitations, and compliance monitoring, reporting and recordkeeping requirements. In addition to these traditional permitting elements, this type of permit would also contain an analysis of significant environmental aspects; the development of environmental objectives and targets; and implementation of environmental management programs that show a commitment to superior environmental protection.

Because the EMS approach is designed to deal with pollution emitted to all media – land, air, and water – this type of permit is expected to be a multimedia permit. This will require approvals from other Department programs including wastewater, hazardous and solid waste, storm water, etc.

The Department is looking into EMS based permits because they focus on environmental performance and best management practices rather than on meeting minimum environmental standards. They allow the Department to acknowledge and reward superior environmental performance. A good, well-maintained EMS can substantially reduce pollution from a facility. Administrative costs to the Department may also be reduced because citizens and the companies assume more of the responsibility.

### ***CURRENT USAGE***

Wisconsin does not currently have an EMS based permit. However, there are many examples being used elsewhere under federal as well as state programs. At present, both Colorado and Minnesota are working on issuing EMS permits. EPA’s Project XL has been used by many states to implement performance based permits. Wisconsin’s own Environmental Cooperation Pilot Program has promoted the use of EMS as well as performance based permitting requirements. Wisconsin’s recently signed Green Tier legislation further demonstrates Wisconsin’s commitment to both EMS and performance based permitting.

With funds from an EPA State Innovation Grant, the Department plans to work on issuing its own Title V Performance Based, EMS permits. Initially the proposed project would be directed toward the printing industry with expansion to other sectors if successful. The goals of this project are 1) to determine the effectiveness of EMS as the “home” of performance based permit conditions, 2) to measure any change in emissions of air, water, and solid and hazardous waste pollution due to this type of permitting, 3) to measure the administrative costs to both facilities and to the Department of this type of permitting, and 4) to assess the quality of public involvement in the EMS permitting process.

Currently, the State of Wisconsin, through Green Tier, can allow facilities to form contracts with the Department. Under Green Tier, the Department could issue EMS permits to facilities as long as they have an Environmental Management System, show superior environmental commitment, and work cooperatively with citizen groups. In return, Green Tier also offers variances from some



Department rules and regulations in order to help meet the needs of businesses and the environment more effectively and efficiently.

As proposed in the State Innovation Grant, the Department will begin working with large printers to work through the process of issuing an EMS permit. Working with these pilot facilities and measuring the results of their permits will lay the foundation for future EMS permits in Wisconsin.

### ***FUTURE APPROACH***

As laid out in the State Innovation Grant, the Department proposes to use the EMS permits of both Colorado and Minnesota as a starting point for its own performance based permit. The lessons learned from these states and their EPA contacts should be very valuable in implementing a program for Wisconsin. Although exactly what Wisconsin's EMS permit would look like is impossible to tell at this point, a few characteristics may be as follows:

Who is Eligible: An EMS based permit would be open to any facility capable of creating and maintaining an EMS. Because this type of permit requires a commitment to superior environmental performance, this program would only be open to facilities that are already in compliance with all Department rules and regulations. Participating facilities would also need to be able to form and work with interested party groups. ISO certification of the facility's EMS would not be a requirement, but some sort of criteria for judging the efficacy of the EMS will need to be established. For this alternative approach, the Department proposes to allow both major sources, that is, sources with emissions over 100 tons per year, and minor sources to participate.

How the Tool Works: Basically, an EMS permit would work somewhat like a bubble permit. Facilities interested in being regulated under an EMS permit would have to show that they are in compliance with Department air, waste, and water regulations. In conjunction with a multimedia team of Department staff and an interested parties group, the company would need to set environmental goals, objectives, and targets. In order to seek variance from certain Department rules and regulations such as construction permitting requirements, the facility would need to take caps on certain air, land, and water pollutant emissions.

Once the negotiating is finished, the facility would construct or adapt the Environmental Management System. The Department's role would be to ensure that certain elements of the EMS exist and that the applicable requirements and appropriate recordkeeping, monitoring, and reporting requirements are included in the EMS as well as the environmental goals agreed to by the interested parties group.

The final piece of this type of permit is the compliance methodology. EMS's typically require auditing at least twice a year by an independent auditor. Any problems or deficiencies are taken care of through corrective and preventive action plans. Department personnel responsible for compliance at a facility with an EMS permit would either become certified auditors or experts in reviewing audit results. Any corrective and preventive action plans would be especially important to review. Annual compliance certification as well as random compliance inspections would also likely be retained as important compliance tools.

What the permit might look like: There are two models of what an EMS permit might look like. In one model, the permit looks more like a traditional bubble permit that contains

conditions to create and maintain an EMS. This type of permit might require that a facility have an environmental management plan to deal with pollutants from a certain process or processes.

In contrast, another type of EMS permit looks more like an Environmental Management System with permit conditions embedded in it. In this example, the environmental management plan for a certain process or processes may contain specific emissions levels and recordkeeping and monitoring requirements that must be attained and maintained to satisfy standards.

### **NEW CONSTRUCTION**

As stated previously, an EMS based permit would function in a similar fashion to a bubble permit. That is, construction permitting would not be required as long as facility wide emissions after the new project stayed below the capped emission levels. In addition, new construction would have to meet the other requirements of the EMS and any new applicable requirements and goals would need to be incorporated into an updated EMS by the facility.

Because this program is expected to be open to major sources of air pollution, it will be important to work with EPA to figure out how to meld Federal New Source Review (air pollution construction permitting rules for major sources) with this EMS approach.

### **PUBLIC PARTICIPATION**

Unlike the current system, public participation in the EMS-based permit is proactive. Interested party groups are informed well in advance of any new projects. The interested parties group is involved in setting environmental goals as the permit is initially negotiated. If the facility decides it needs to make operational changes, the group would be informed of the business and/or environmental reasons for changes and the group would offer help and advice to the company as to the social and regulatory outcomes of the changes. By the time the new project is underway, the public is more likely to be at least neutral if not supportive of the new project and community concerns should have been addressed as part of the planning.

This type of public participation has been used successfully with EMS in Europe and has been adopted by most holders of EMS here in the United States as well.

### **COST/BENEFITS ANALYSIS**

#### Regulated Facilities:

- Benefits – Regulatory relief. Ability to make changes without administrative burden or long time lag. Ability to use the best approach for the unique situation to reduce emissions. Credit for pollution prevention. Better relationship with stakeholders
- Costs – Cost of developing an EMS. Increased administrative burden of an EMS. Costs of independent audits of the EMS. Difficulty in establishing a relationship with stakeholders.

#### Environment:

- Benefit – Better environmental stewardship by business. Long term environmental planning. One multimedia permit helps ensure that programs work together to benefit the environment. For example, permit conditions that transfer pollution from air to water would be reduced or eliminated.
- Cost – Elimination of daily records makes it more difficult to forecast when a violation might occur. If monthly records are allowed to replace daily records, a violation may continue to occur until the end of the month rather than the end of the day.



Department:

- Benefits – More administrative burden taken on by facilities. Fewer construction permits and permit revisions would need to be written reducing the Department's administrative costs. Some of the compliance work may be done by independent auditors, resulting in cost savings.
- Costs – Difficulty in establishing a partnership relationship with facilities and stakeholders. Elimination of prescriptive permit conditions may make compliance determination more difficult. Cost of training Department personnel on EMS and auditing techniques. Cost of providing training for the public on their changed level and type of involvement.



## IX. Interface with Federal Clean Air Act

This chapter of the Report provides the information required by 2003 Wisconsin Act 118, Non-Statutory Provision, Section 231(1)(a)4., which provides as follows:

*“The department of natural resources, in consultation with owners and operators of stationary sources of air pollution, shall develop a report that contains all of the following: ...4. A description of requirements in the federal clean air act that limit the Department’s ability to expand exemptions under section 285.60(6) of the statutes, as affected by this act, expand the use of registration permits under section 285.60(2g) of the statutes, as created by this act, expand the use of general permits under section 285.60(3) of the statutes, as affected by this act, expand the issuance of construction permit waivers under section 285.60(5m) of the statutes as created by this act, and take other actions under section 285.60(10) of the statutes, as created by this act, and recommendations on how these limitations might be overcome.”*

The federal Clean Air Act limits the Department’s ability to do a number of things that WI Act 118 requires. The following examples point out where there are limitations.

### ***Clean Air Act Requirements that Limit the Department’s Ability to Expand Exemptions under s. 285.60(6), Stats.***

The air permit program is divided into construction permits and operation permits. The Clean Air Act deals with these types of permits differently, so DNR’s ability to expand exemptions will also differ depending on whether the exemptions are for construction or operation permits.

#### ***1. Construction Permits***

The federal Clean Air Act (CAA) requires any “major” air pollution source in an attainment area or a non-attainment area to obtain a construction permit prior to commencing construction of a major source or of a major modification of a major source. The definition of “major source” varies based on whether the area in which the source will be located is in attainment with ambient air quality standards or is in non-attainment with one or more ambient air quality standards. The definition of “major source” also varies depending on the source category.

##### ***a. Construction Permits Issued under Prevention of Significant Deterioration***

For sources located in attainment areas (Prevention of Significant Deterioration sources or PSD sources), a major source is generally one that has the potential to emit 250 tons per year or more of any air contaminant subject to regulation under the CAA. For certain categories of sources, a major source is one that has the potential to emit 100 tons per year or more of any air contaminant subject to regulation under the CAA. (There are 28 of these source categories at this time.) Likewise, a “major modification” to a major source requires a PSD major source permit. A major modification occurs when a physical change or a change in method of operation of a major source results in a significant net emissions increase in a pollutant regulated under the CAA. The significance level is established in the CAA.

Under the CAA, construction or major modification of a major source requires a PSD construction permit and the Department may not exempt such sources from the requirement to obtain a construction permit. (Section 165 of the CAA, 42 USC 7475 and 40 CFR 51.160 *et seq.*)

### **b. Construction Permits in Non-attainment Areas**

In non-attainment areas, a different definition of “major source” is used, depending on the air contaminant for which the area is designated non-attainment and the severity of the non-attainment status. In Wisconsin we have historically had ozone non-attainment areas. Under the older 1-hour ozone standard, the Southeast Wisconsin area, consisting of Milwaukee, Waukesha, Ozaukee, Washington, Racine and Kenosha counties, is considered a “severe” ozone non-attainment area. In that area, any source which has the potential to emit 25 or more tons of volatile organic compounds (VOCs) or 100 tons or more of nitrogen oxides is considered a major source. Likewise, major modifications to these major sources also require a construction permit under the CAA.

Under the new 8-hour ozone standard, the same 6 county Southeast Wisconsin area has been designated a moderate ozone non-attainment area, as has Sheboygan county. This means that any source in these counties with the potential to emit of 100 tons per year of VOCs or nitrogen oxides is considered a major source. Door, Kewaunee and Manitowoc counties have been designated as basic ozone non-attainment areas and the same 100 ton per year VOC and nitrogen oxide thresholds apply in those counties. Again, new major sources and major modifications to major sources in non-attainment areas require construction permits under the CAA and may not be exempted from this requirement. (Sections 172, 173 and 182 of the CAA, 42 USC 7502, 7503 and 7511a.)

### **c. Minor Source Construction Permits**

Section 285.60(6)(b), Stats., created by 2003 Wis. Act 118, states:

*“Subject to sub. (8), the department shall, by rule, exempt minor sources from the requirement to obtain a construction permit and an operation permit if the emissions from the sources do not present a significant hazard to public health, safety or welfare or to the environment.”*

However, section 110(a)(2)(c) of the CAA (42 USC 7410(a)(2)(c)) requires each State Implementation Plan (SIP) to include a program for the regulation of the construction and modification of any stationary source (including any minor sources) as necessary to assure that the national ambient air quality standards are achieved. Since the federal standard for allowing exemptions for minor sources is different from the state standard contained in the quoted portion of s. 285.60(6), above, the CAA standard must be applied. This is because s. 285.60(6)(b), Stats., begins: “Subject to sub. (8)...”. Section 285.60(8), Stats., says that the Department may not promulgate a rule or take any other action under this section that conflicts with the federal clean air act. Since application of s. 285.60(6)(b), Stats., would conflict with section 110(a)(2)(c) of the CAA, the Department must follow the CAA standard in promulgating rules for exemptions for minor sources. In practice, this may result in similar types of minor sources eligible for exemption whether using the standard in s. 285.60(6), Stats., or the CAA standard.

## **2. Operation Permits**

Title V of the CAA requires certain sources to obtain operation permits; these sources may not be exempted from the requirement to obtain an operation permit. (Section 502 of the CAA, 42 USC 7661a.) Under 40 CFR part 70, the following sources are required to obtain a Title V (also known as a Part 70) permit:

- Major sources: These include:

- Sources that have the potential to emit 10 tons per year or more of any one hazardous air pollutant regulated under s. 112 of the CAA or have the potential to emit 25 tons per year or more of a combination of those hazardous air pollutants;
  - Sources that have the potential to emit 100 tons per year or more of any air contaminant; and,
  - Non-attainment area major sources (see description under Non-attainment New Source Review above).
- Affected sources under the CAA Title IV acid rain program
  - Major sources subject to a standard under s. 111 or 112 of the CAA, with some exceptions. (Section 111 contains New Source Performance Standards; s. 112 regulates Hazardous Air Pollutants)
  - Solid waste incineration units required to obtain permits pursuant to s. 129 (e) of the CAA
  - Perchloroethylene dry cleaning area sources under s. NR 468.20(2)(am), Wis. Adm. Code
  - In-line cleaning machines, as defined in s. NR 469.02(26), Wis. Adm. Code, that use any halogenated hazardous air pollutant solvent as a cleaning or drying agent
  - Batch vapor cleaning machines as defined in s. NR 469.02(3) and (44), Wis. Adm. Code, that use any halogenated hazardous air pollutant solvent as a cleaning or drying agent
  - Chromium electroplating and chromium anodizing area sources as defined in s. NR 460.02(5), Wis. Adm. Code
  - Source categories listed by the EPA Administrator pursuant to 40 CFR 70.3(a)

Note that EPA does not require Title V permits for perchloroethylene dry cleaning area sources, in-line or batch vapor cleaning machines that use halogenated solvents or chromium electroplating area sources and is still evaluating whether to permanently exempt these categories from the requirement to obtain a Title V permit. The Department currently requires Title V permits for these sources. Except for those four categories of sources, none of the sources listed above may be exempted from the requirement to obtain an operation permit under the CAA. More sources may be added to this list in the future as EPA has the ability to change these requirements by creating or modifying federal regulations. (Section 502 of the CAA, 42 USC 7661a.)

There is no federal requirement to issue operation permits to non-Title V sources, although sources with the potential to emit greater than the levels described above may elect to avoid Title V status by accepting permit limits which make them non-Title V sources. These are called federally enforceable state operation permits or FESOPs.

### ***CAA Requirements that Limit the Department's Ability to Expand the Use of Registration Permits under s. 285.60(2g), Stats.***

Section 285.60(2g), Stats., gives the Department the ability to promulgate rules specifying a simplified process under which the Department may issue a registration permit authorizing construction or operation or both for sources with low actual or potential emissions. The rules will include criteria for identifying categories of sources that may elect to obtain registration permits. The Department has developed draft rules, which will be going to public hearing soon. Again, the authority for registration permits is limited by the language in s. 285.60(2g)(a), Stats., which starts "Subject to sub. (8)...". As noted above, s. 285.60(8), Stats., requires the Department to implement the registration permit program in a way that does not conflict with the CAA.

The Department will not be using registration permits to regulate major sources or Title V sources that require construction or operation permits under the CAA. This is because the Department can only issue registration permits to sources with low actual or potential emissions, and major sources will not meet this criterion. Section 285.60(2g)(b), Stats., states that the procedural requirements of ss. 285.61(2) to (8) and 285.62(2) to (5), Stats., do not apply to registration permits. The procedural requirements in these sections are required for issuance of major source construction and operation permits (i.e. requirements like 30-day public notice and opportunity for hearing). This is another reason that registration permits will not be used for major or Title V sources.

The Department will most likely issue registration permits to minor sources with low actual or potential emissions and should be able to implement the program for these sources without violating the CAA. The Department is also examining other states' registration permit programs to see how they are used in those states and to determine whether EPA has found any problems with implementation in those states. Once the registration permit rules are finalized, they will be submitted to EPA for its approval into Wisconsin's State Implementation Plan. This review by EPA will ensure that the registration permit program does not violate the CAA.

### ***CAA Requirements that Limit the Department's Ability to Expand the Use of General Permits under s. 285.60(3), Stats.***

Section 285.60(3), Stats., gives the Department the authority to promulgate rules for the issuance of general permits authorizing construction or operation or both for similar stationary sources. The rules are to specify criteria for identifying categories of sources for which the Department may issue general permits and general requirements applicable to sources that qualify for general permits. Like registration permits, the procedural requirements of ss. 285.61(2) to (8) and 285.62(2) to (7), Stats., do not apply to a general permit.

The Department has promulgated rules for general operation permits, which are contained in s. NR 407.10, Wis. Adm. Code. These rules, which have been approved by EPA as part of Wisconsin's Title V permit program and its SIP, do not allow major sources or major modifications under chs. NR 405 (PSD) or NR 408 (major sources in nonattainment areas) to be covered by general operation permits.

2003 Wisconsin Act 118 gave the Department the authority to issue general permits for construction or operation or both. The newly revised s. 285.60(3), Stats., does not refer to sub. (8); however, it seems clear that s. 285.60(8), Stats., also applies to general permits under sub. (3) and restricts the Department from making rules or taking actions that conflict with the CAA.

While EPA has previously approved the Department's rules for general operation permits in s. NR 407.10, Wis. Adm. Code, the revised s. 285.60(3), Stats., removes some procedural requirements for general permits. It is the Department's understanding that a general operation permit for a Title V source (or a source that is obtaining its first "synthetic minor" operation permit) would need to go through the procedures in s. 285.62(2) to (7), Stats., before the Department could issue a general operation permit for a Title V or first-time synthetic minor source. For minor sources, we see no immediate CAA impediment to implementing the general operation permit program. However, the rules implementing the program must be submitted to EPA as a SIP revision and EPA approval will be required.

Regarding general construction permits, the Department has not had previous experience with issuing general construction permits. For new major sources or major modifications to existing major sources, EPA requires use of procedural requirements such as those in s. 285.61(2) to (8), Stats. For minor sources, the Department believes that it can develop rule requirements for general sources without violating the CAA. These rules are in draft form and will be going to public hearing soon. These rules will also need to be submitted to EPA as a SIP revision and EPA approval will be required.

### ***CAA Requirements that Limit the Department's Ability to Expand the Use of Construction Permit Waivers under s. 285.60(5m), Stats.***

Section 285.60(5m), Stats., says that, subject to sub. (8), the Department shall promulgate rules under which a person is allowed to commence construction, reconstruction, replacement or modification of a source prior to issuance of a construction permit upon a showing that commencing construction, etc. prior to issuance of the permit is necessary to avoid undue hardship. Subsection (5m)(b) states that, subject to sub. (8), the Department may allow a person to commence construction, etc. prior to issuance of a construction permit on a case-by-case basis or on bases specified in the rule. Again, the reference to sub. (8) means that the Department may not promulgate a rule or take any other action under this section that conflicts with the CAA.

There are several problems with this provision as it relates to the CAA and Wisconsin's State Implementation Plan. First, for major sources in attainment or non-attainment areas, the CAA prohibits commencing construction or a major modification without a permit. (Sections 165, 172, 173 and 182 of the CAA, 42 USC 7475, 7502, 7503 and 7511a.) While the federal definition of "commence construction" is slightly different from the state definition, the federal prohibition on commencing construction will prevent the Department from granting construction permit waivers for major sources, because it would violate the CAA.

For minor sources, the Department will be able to issue commence construction waivers, but will need to warn applicants that commencing construction without a permit will violate Wisconsin's State Implementation Plan (SIP) until the SIP has been revised by the Department and approved by EPA. The SIP is required by the CAA and constitutes Wisconsin's plan to comply with CAA requirements and to attain and maintain compliance with national ambient air quality standards. (Section 110 of the CAA, 42 USC 7410.) The Department's definition of "commence construction" is contained in s. NR 400.02(44), Wis. Adm. Code, which has been submitted to and approved by EPA as part of Wisconsin's SIP. As part of Wisconsin's SIP, the prohibition on commencing construction without a permit is federally enforceable. Therefore, even if the Department grants a waiver under s. 285.60(5m), Stats., EPA could pursue an enforcement action against the source for violating Wisconsin's SIP (which requires a permit prior to commencing construction.) DNR will develop rules for the construction permit waiver program, which will be submitted to EPA for approval as a SIP revision. The rules will need to comply with the CAA.

### ***CAA Requirements that Limit the Department's Ability to Take Other Actions under s. 285.60(10), Stats.***

Section 285.60(10), Stats., provides as follows:

*"The Department shall continually assess permit obligations imposed under this section and ss. 285.61 to 285.65 and implement measures that are consistent with this chapter and the federal clean air act to allow for timely installation and operation of equipment and processes and the pursuit of related economic activity by lessening those obligations,*

*including consolidating the permits for sources at a facility into one permit, expanding exemptions under sub. (6), and expanding the availability of registration permits under sub. (2g), general permits under sub. (3) and construction permit waivers under sub. (5m)."*

The prior sections of this chapter describe the problems with expanding exemptions, registration permits, general permits and construction permit waivers. The other issue discussed in sub. (10) is consolidating permits for sources at a facility into one permit. The CAA does not prohibit the consolidation of permits; in fact, Title V of the CAA, which governs Title V operation permits, contemplates the issuance of a single permit for an entire facility. Once the Department has issued all of its Title V operation permits, all changes at the source will eventually be incorporated into that single permit.

Currently Wisconsin Statutes and rules require issuance of separate construction and operation permits. However, the Department has an Air Permit Improvement Initiative group, which is examining, among other things, issuance of combined construction and operation permits. Changing the air permit program in this way will require changes to state statutes and rules, which would then need to be approved by EPA, both as part of Wisconsin's SIP and for its Title V program approval. The Department's group will be looking at the different permit requirements and how such a program might be implemented. There are other states that have developed combined permit programs, and the Department will be looking at those programs to see how they work and whether EPA has approved them.

### ***Recommendations on How the Limitations Described Above Might be Overcome***

Most of the new permit programs in 2003 Wisconsin Act 118 can be applied to minor sources without violating the CAA. The CAA would have to be changed to apply some of these provisions to major sources. Any rules developed under the revised statutes should be submitted to EPA as SIP revisions so that air pollution sources availing themselves of the new rule provisions need not be concerned that the program is not federally approved.

### ***EPA concerns with Wisconsin Act 118***

The EPA Region V office sent a letter on August 5, 2004 notifying the Department of its concerns with certain provisions of 2003 Wisconsin Act 118. A copy of EPA's letter is included in **Appendix H**. The Department has not yet responded to the letter.

## X. Public Involvement

Public involvement is an integral part of issuing an air permit. The public provides valuable input to both industry and to the Department on local implications of a permitting action. The public can be an important source of support for a facility as well as a social, economic and environmental conscience. It is important that the public have good information and adequate opportunity to provide input.

Currently, the public has an opportunity to comment on Department administrative rules that define how the air permit program will operate in Wisconsin. In addition, the public gets 30 days to submit written comments on an individual permit to the Department. Additionally, the public can petition for a hearing on the proposed permit. A hearing allows individuals who have a concern to have their comments made part of the official permit record. When a standardized permit (i.e., registration or general permit) is issued, the public has the opportunity to comment on the permit template that is developed but not on each individual permit. For example, the public would comment on the operation permit template for asphalt plants, but not on the issuance of the general permit to each specific facility.

The Stationary Source Strategy described in this report makes significant changes in the way permits are issued, such that traditional methods of public involvement may not work as well. The Air Permit Improvement Initiative formed a Public Involvement Workgroup to address these issues. The Public Involvement Workgroup will be responsible for designing a public involvement process that emphasizes partnership between all parties, external communication/education, and providing data on public health/environmental information. The focus will be on developing more proactive methods for the public and interested parties to better understand the permit program, to understand the effects of permitting actions on the environment, and to participate in the process. The use of interested parties groups will be explored as part of the work on Bubble permits and EMS-based Permits. The Internet will be a critical tool for providing clear, understandable and timely information to the public on actions relevant to them.

The Public Involvement Workgroup is composed of 22 members from the Department, EPA, industry, environmental interests, local government officials, small business, economic development representatives and citizens. The workgroup will gain a shared understanding of the current public involvement process in air permitting. The Department is committed to providing meaningful opportunities for public involvement as it streamlines the traditional permitting process. Additionally, the workgroup will suggest ways to improve and enhance public involvement, with the goal of developing a process that allows for meaningful involvement of all parties in the permitting process.

### Schedule and Work Products

By January 2005:

- Develop and implement methods to cultivate a shared understanding of the function of permitting, the role of the Department, and how to participate in the permit and permit rulemaking processes.
- Define, develop and make available public health/emission data on the web.
- Develop and implement communication and/or education methods appropriate for different degrees of permit regulation changes.



- Complete design and development of web pages for all external parties. These pages should contain the type of tracking information and documents to be made available on the web. These pages should also be able to help identify for the public and other interested parties when there are permit actions relevant to them.
- Develop a simplified public notice or other mechanism to communicate easily understandable permit information to the public.
- Develop and implement recommendations for meaningful involvement by economic development specialists.

By February 2005:

- Develop and implement methods to ensure that businesses and interested parties have a clear understanding of the content of primary compliance documents.
- Develop and implement methods to effectively resolve conflicts with businesses and interested parties.

## XI. Compliance Activities

Permits are only one part of the regulatory process for facilities that have air emissions. Facilities with air emissions are required to be in compliance with all applicable federal and state air regulations whether the facility has an air permit or not. Air regulations are very complex and written in formal legal language. To determine what requirements a facility must comply with, someone needs to read and understand all the regulations, determine how they fit together, as well as how they are interpreted by the regulatory agencies, and in many cases run complex calculations and computer models. Large facilities often have attorneys, engineers and consultants who can do this work. For smaller facilities, it is usually too expensive for them to hire this expertise.

Permits are one legal mechanism for bringing together all the applicable requirements for a facility. In one document a permit provides all the legal requirements the facility is expected to comply with as well as how that facility must demonstrate compliance with those legal requirements. The content of the permit is tailored to the specific circumstances of the facility. The facility, Department staff, U.S. EPA, and the public then all have an understanding of what the facility is expected to do and when they are expected to do it.

Compliance activities help assure the Department and the public that a facility is doing what it is required to do to protect air quality. Compliance activities can include technical assistance, inspections, legal documents such as permits or orders, or formal enforcement activities. Compliance activities can often help a facility better understand what they are required to do. Compliance activities often give a facility a chance to ask questions about requirements, and to indicate where they might be having problems. Compliance staff can often share information with facilities about what others are doing in similar situations and refer them to technical resources when a facility is having a problem. Compliance activities lead to better compliance with the law and better air quality for all.

Compliance activities are needed for larger facilities due to the size of their emissions and environmental impact. Compliance activities are also needed for small facilities that need more support so they can better comply with the law. Several examples below illustrate the need for compliance activities and how compliance activities help smaller facilities.

### ***Compliance Activities and Smaller Facilities***

During the last two years, as part of the implementation work for the Maximum Achievable Control Technology Standards (MACT), Department compliance staff performed several inspections at both chromium electroplaters and halogenated solvent degreasing operations. Both of these operations are often found at small businesses. Many of these facilities are not permitted yet but they are still required to comply with the Federal MACT standards. The numbers of inspections and of violations are summarized in the table below. It is interesting to note that the proportion of inspections that showed both violations and serious violations was almost identical in both source categories.

### Some Smaller Facilities Do Have Some Serious Violations

	Chromium MACT inspections	Halogenated Solvent Inspections
Number of Inspections	16	15
Number of Violations	10	9
Percent of inspections showing a violation	62%	60%
Number of serious <sup>1</sup> violations	3	3
Percent of inspections showing a serious violation	19%	20%

<sup>1</sup> Serious violations are violations not just of failure to report (paper work violations) but violations that resulted in excess emissions by not either installing / operating air emission control equipment

Using data from Air Program inspections conducted during state fiscal year '04 provides a comparison of noncompliance rates between larger (major and synthetic minor) and smaller (minor) facilities. The rate of noncompliance for small facilities inspected during FY '04 was nearly twice that found at larger facilities. Data is not available to distinguish between serious and other violations for the inspections included in the table below. Five of the halogenated solvent inspections included in the table above occurred during FY '04 and are included in the minor source inspection numbers in the table below as well.

### Many Smaller Facilities Violate More Often Than Major Sources

	Major and Synthetic Minor Source <sup>1</sup> Inspections	Minor Source <sup>1</sup> Inspections
Number of Inspections	273	19
Number of Violations	59	8
Percentage of Inspections Showing a Violation	22%	42%

<sup>1</sup> Major, synthetic minor, and minor, as defined in EPA permitting terminology

The greater number of inspections conducted at larger facilities reflects EPA's Compliance Monitoring Strategy policy, and the national emphasis on these facilities. The data in the two tables above strongly suggests that further assistance may benefit small facilities.

### Examples of Compliance Activities Helping Smaller Facilities

The use of compliance assistance strategies with small companies can have a large impact on emissions and air quality. The following are examples of compliance assistance tools other states have developed to help improve regulatory understanding and possibly increase compliance rates at small facilities.

#### **Example: Virginia**

The Virginia Department of Environmental Quality developed a "Dry Cleaning Compliance Calendar" to assist dry cleaners in complying with both the Virginia and Federal Perchloroethylene Dry Cleaner Regulations. There are approximately 592 dry cleaning sources in Virginia which are regularly inspected by the agency. As a result of this effort, the Department of Environmental Quality reports that there is a steady decline in the non-compliance rate (37% in 2001, 17% in 2002, and 10% in 2003).

### **Example: Colorado**

In 2001-2002, the Colorado Department of Public Health and Environment and the U.S. EPA entered into a Compliance Assurance Pilot Project for ensuring compliance and improving the environmental performance of the asphalt paving industry. The Department conducted baseline assessments of 44 permitted asphalt facilities. The Department undertook compliance assistance activities with these facilities and followed that with a second assessment (date not yet available) to determine progress. Colorado looked at Air Emission Critical Items – those items that, if not in compliance, would normally result in enforcement action. The initial assessment found:

- 55% of asphalt plants had significant dust emissions but no Fugitive Dust Control Plans
- 57% had lime silos above the reporting threshold for lime
- 44% had opacity issues with the hot mix storage silos and the pugmills located at the plants.
- 31% of the pugmills were observed to exceed the 20% opacity standard.

### **Example: Massachusetts**

The Massachusetts Department of Environmental Protection (MADEP) is a national leader in the use of Environmental Results Programs (ERPs) for small facilities. Their work indicates that small facilities can improve their environmental performance when provided tailored compliance assistance.

Dry Cleaners: MADEP determined that, prior to instituting the ERP program, only 33% of dry cleaners in 1997 were engaging in leak checks. After ERP, the number of dry cleaners performing routine leak checks increased to 66% in 2000. This improvement, when applied across the entire sector, resulted in an estimated reduction of 22.5 tons of perchloroethylene emissions to the air.

Printers: Some performance level improvements have led to tangible changes in environmental impact for the printing sector in MA. For example, the performance rate for applicable standards for press cleaning solutions (e.g. use of lower Volatile Organic Compound products) increased from 77% in 1998 to 85% in 1999. This improvement extrapolates to an estimated emissions reduction of four tons annually for the entire sector.

### **Conclusions**

The data from these various studies supports the thinking that, especially for small facilities, a strong compliance program that includes a good mix of frequent and detailed technical assistance and regular inspections can lead to better facility compliance with the regulations and better air quality. ERPs are leading to similar conclusions because their basic design incorporates detailed technical assistance through workbooks, training sessions, and self-certification along with randomized inspections by the regulatory agency, all done on an annual cycle.

Likewise, the data implies that when emission limitations and compliance requirements are not provided to facilities, compliance rates drop. Currently, the only tools the Department uses to provide compliance assistance are the traditional permit and the individual compliance inspection and its accompanying report. The stationary source strategy being proposed reduces the number of traditional permits that the Department will write and increases the number of exemptions and nontraditional permits. Exemptions and registration permits will not usually provide the underlying

applicable air quality requirements that a business needs to comply with. Businesses will be “on their own” to figure out what requirements apply to them. It is therefore essential that the Department develop alternative compliance assistance tools to accompany these new ways of addressing a source’s need for a permit and how to ensure compliance with the applicable requirements.



## XII. Fees

On March 4, 2004, the US Environmental Protection Agency (EPA) issued a Notice of Deficiency (NOD) for the State of Wisconsin's Clean Air Act Title V operating program. Among the deficiencies cited by EPA were Wisconsin's failure to ensure that its Title V program funds are used solely for Title V permit costs and failure to demonstrate that adequate funding would be available in the future to adequately support Title V program activities. The Notice stated that:

*"Section 502(b) of the Act, 42 U.S.C. 7661(b), and 40 CFR 70.9(a) provide that state Title V programs must ensure that all Title V fees are used solely for permit program costs...the State is not distinguishing between fees collected from sources operating under different Clean Air Act programs.... between fees collected under Title V and other non-Title V fee-based programs."*

In the June 4, 2004 90-Day Response to the NOD, the Department indicated that it considered the Federally Enforceable State Operation Permit (FESOP) Program (i.e., the synthetic minor permit and compliance program) to be part of its delegated Title V program responsibilities. "The 2002 emission inventory billing of \$9,739,081 included \$143,128 from State Operation Permit (non Title V) emission fee revenue and \$9,595,953 from Federal Operation Permit and Federally Enforceable State Operation Program (Title V) emission fee revenues."

EPA responded to DNR's letter on August 5, 2005. In that letter, EPA states "WDNR currently combines FESOP and Title V fees in one account. WDNR either must separate these funds physically or use adequate accounting to segregate the Title V fees and to ensure that these fees are used only to pay for Title V costs."

The issue of future fees and funding for Wisconsin's program is unresolved at this point, and will be dependent on the resolution of the EPA NOD. The Department's current understanding of EPA's position is that once a synthetic minor (FESOP) permit has been issued, the facility is no longer considered to be a Title V facility. Therefore, the on-going permit and compliance work associated with that facility cannot be funded through the emission fees paid by Title V facilities. This appears to be the case even though the facility may need to have its permit renewed or revised in order to maintain its FESOP status and may be subject to EPA's Compliance Monitoring Strategy. It would appear that the Department does not have the statutory authority to resolve this funding issue through adjusting emission fees. Therefore, it may prove necessary to seek statutory authority for synthetic minor permit issuance and compliance activities.

### XIII. Schedule for Additional Work and Additional Reports

Following is the Department's planned schedule for additional work and additional reports in each of the permit process areas:

#### General/Registration Permits

- October 2004 – hearings on proposed rules
- Fall 2004 and Winter 2005 – Rules adopted by Natural Resource Board and submitted to Legislature for review
- Spring 2005 – Rules in effect; Rules submitted to EPA for State Implementation Plan approval
- Summer and Fall 2005 – Development of general permits for up to 10 industry source categories

#### Exemptions

- Spring – December 2005 – Rule revisions taken to Natural Resources Board to request hearing and final approval and submitted to Legislature for review
- Spring – December 2005 – Rules become effective; Rules submitted to EPA for State Implementation Plan approval

#### Construction Permit Waivers

- Spring 2005 – Review experience with case-by-case waiver requests to establish criteria for rule development
- Spring – December 2005 – Rule revisions taken to Natural Resources Board to request hearing and/or final approval
- June 2006 – Rules become effective; Rules submitted to EPA for State Implementation Plan approval

#### Permit Consolidation

- Fall 2004 – Evaluate alternatives with stakeholder input
- January 2005 – August 2005 -- Rule revisions taken to Natural Resources Board to request hearing and/or final approval and submitted to the Legislature for review

#### Individual Permits

- March 2005 – Reports to the Legislature on Emissions Monitoring Practices and Application Requirements, as required by 2003 Wisconsin Act 118.
- January 2005 – December 2005 – Rule revisions taken to Natural Resources Board to request hearing and/or final approval and submitted to the Legislature for review
- June 2005 – June 2006 – Rules become effective; Rules submitted to EPA for State Implementation Plan approval

#### Alternative Regulatory Approaches

- October 2004 – EPA grant for innovation approved
- 2005 – Bubble permits, Environmental Management System permits, and Environmental Results Program all piloted
- 2006 – Administrative Rule changes made based on the results of the pilots

#### Public Involvement

February 2005 – conceptual work completed



2005 – Administrative Rule changes made, if needed

Information Technology to support the processes

Most of the process improvements that directly affect regulated facilities and the public will be dependent on developing appropriate electronic tools. For example, electronic submittals of permit applications, monitoring and compliance data, and real time tracking of permits will not be achieved without significant changes to the Air Management Program's electronic information systems.

The Department is requesting spending authorization for the needed information technology improvements. It will take 2 ½ years from the time funds are available to complete all the information technology work. However, as tools are developed during this time, they will be made available to regulated facilities and to the public.

Final Report

January 2006 -- Final report on the Air Permit Improvement Initiative published.

## XIII. Appendices

### ***Appendix A***

#### ***Fact Sheets: Air Permit Basics and Glossary***



**Appendix B**  
**Air Permit Improvement Initiative Targets and Measures**

Target	APII Measure	Source
<b>PROCESS TARGET 1:</b> By December 2004, define a process which ensures that regulated facilities will be covered under just one primary compliance document. <sup>6</sup> By December 2005 complete development and begin implementation.	P1.1 By December 31, 2004, answer yes or no, was the process developed  Baseline Due: N/A Check: December 31, 2004 Responsible for Collecting: Workgroup 4	
	P1.2 By December 31, 2005, count the percentage of facilities with more than one primary compliance document.  Baseline Due: September 30, 2004 Rechecks: December 31, 2005 and June 30, 2006. Responsible for Collecting: Workgroup 4	Use Air Permit Software to count the number of primary compliance documents per facility.
<b>PROCESS TARGET 2:</b> By December 2005, develop, document, communicate, and manage an updated, consistent, and accurate process for issuing, renewing, and revising permits. Incorporate procedures for any new regulatory approaches into the process. Update procedures regularly.	P2.1 By December 31, 2005, answer yes or no, was a process developed for each type of existing permit action.  Baseline Due: N/A Check: December 31, 2005 Responsible for Collecting: Workgroup 4	
	P2.2 By June 30, 2006 spot check primary compliance documents and supporting technical documents for consistency (defined per manual code) reviewing 10% which are selected based on customer input, sector, new applicable regulations, or other salient issues. This will set a baseline consistency level for the new process(es) developed to meet this target.  Baseline Due: June 30, 2006 Rechecks: N/A Responsible for Collecting: Workgroup 5	Workgroups 2, 3, and 4 will need to build measurement strategies into the processes they develop. Workgroup 5 needs to come up with the overall method for continued management of consistency

Target	APII Measure	Source
	<p>P2.3 By June 30, 2006 evaluate whether processes are up to date and effectively communicated.</p> <p>Baseline Due: June 30, 2006 Rechecks: N/A Responsible for Collecting: Workgroup 5</p>	During each biennial program review, conduct interviews with permit drafters and managers.
<p><b>PROCESS TARGET 3:</b> Answer questions on permit process and permit policy quickly and accurately resulting in a consistent statewide program providing certainty to staff, permittees, and the public.</p>	<p>P3.1 Track the following:</p> <ul style="list-style-type: none"> <li>the number of questions received each month,</li> <li>the number of questions answered,</li> <li>the average response time for answered questions,</li> <li>the text of all questions</li> <li>the person who asked the question</li> </ul> <p>Baseline Due: September 30, 2004 Rechecks: December 31, 2004; March 30, 2005; June 30, 2005; September 31, 2005; December 31, 2005; March 31, 2006 and June 30, 2006 Responsible for Collecting: Workgroup 5</p>	Workgroup 5 will be responsible for establishing a short term and long term process that meets the target and can supply data for the measure.
	<p>P3.2 No less frequently than on a semi-annual basis, contact persons who had questions to determine their satisfaction with the certainty provided by the answer.</p> <p>Baseline Due: None Rechecks: December 31, 2004; June 30, 2005; December 31, 2005; June 30, 2006 Responsible for Collecting: Workgroup 5</p>	Work group 5 will be responsible for establishing a method for measuring.
<p><b>PROCESS TARGET 4:</b> Make 100% of permit decisions according to deadlines specified in 2003 WI Act 118.</p>	<p>P4.1 Track the percentage of operation and construction permit decisions made according to deadlines specified in 2003 WI Act 118. These deadlines are:</p> <ul style="list-style-type: none"> <li>for operation permits - 180 days after receipt of a complete application.</li> <li>for construction permits - 60 days after the end of the public comment period</li> </ul> <p>Baseline Due: June 30, 2004 Rechecks: Quarterly until June 30, 2006 Responsible for Collecting: Workgroup 4</p>	<p>Sample Equation</p> $\% \text{ permits issued by deadline} = \frac{(\text{number of permits issued by deadlines during the previous 6 months})}{(\text{total number issued during the previous 6 mo})} \times 100\%$ <p>Air Permit Software tracking is used to track number of permits issued and the number of days elapsed.</p>

Target	APII Measure	Source
<b>CUSTOMER SERVICE</b> <b>TARGET #1:</b> Track key events of permit applications in "real time". By December 2004, make event tracking and support documents available on the Department's website in a timely manner for all customers. By June 2006, the Air Program will be able to receive and process applications electronically.	C1.1 By December 31, 2004 answer yes or no, is a tracking system on the web for all users to view. Baseline Due: N/A Check: December 31, 2004 Responsible for Collecting: Workgroup 2	
	C1.2 By June 30, 2006 answer yes or no, applications can be received and processed electronically.  Baseline Due: N/A Check: June 30, 2006 Responsible for Collecting: Workgroup 6	
	C1.3 By June 30, 2006 evaluate level of customer satisfaction with the web site.  Baseline Due: June 30, 2006 Rechecks: N/A Responsible for Collecting: Workgroup 2	Workgroup 2 will establish the criteria. Recommend ease of use and appropriateness of content.
<b>CUSTOMER SERVICE</b> <b>TARGET #2:</b> By January 2005, the Air Program will develop a partnership among the public, business, EPA and internal staff related to the function of permitting and the role of the Department. All parties are aware of how to participate in the permit and permit rule-making processes in a meaningful way.	C2.1 By January 31, 2005, measure the level of all parties' understanding of the process including the structure and everyone's roles and responsibilities.  Baseline Due: January 31, 2005 Rechecks: June 30, 2006 Responsible for Collecting: Workgroup 2	Method to be developed by workgroup 2
	C2.2 By January 31, 2005, develop the baseline level of all parties' satisfaction with the process including the structure and everyone's roles and responsibilities.  Baseline Due: January 31, 2005 Rechecks: June 30, 2006 Responsible for Collecting: Workgroup 2	Method to be developed by workgroup 2. Baseline will need to be established so as to measure change in satisfaction level.  Workgroup 2 needs to consult with Ed Nelson on how to reach public that doesn't know how to participate.

Target	APII Measure	Source
<b>CUSTOMER SERVICE</b> <b>TARGET #3:</b> By February 2005, the Air Program will develop methods to ensure that businesses and interested parties have a clear understanding of the content of primary compliance documents; how facilities demonstrate compliance; and how to effectively resolve conflicts with the Air Program.	C3.1 By February 28, 2005 answer yes or no, were methods developed to increase understanding of compliance documents, compliance demonstration, and conflict resolution.  Baseline Due: N/A Check: February 28, 2005 Responsible for Collecting: Workgroup 2	
	C3.2 By June 30, 2005 and June 30, 2006, evaluate the degree of implementation of the methods.  Baseline Due: June 30, 2005 Rechecks: June 30, 2006 Responsible for Collecting: Workgroup 2	Perform a check based on the methods developed  .
	C3.3 Level of satisfaction of all businesses and interested parties, with their understanding of the compliance document and their ability to resolve conflicts.  Baseline Due: December 31, 2004 Rechecks: June 30, 2005 and June 30, 2006 Responsible for Collecting: Workgroup 2	Follow up with customers by ways of focus groups or survey. This will occur during the biennial program review.  .
	C3.4 Track numbers of monitoring requirement appeals, commence construction waivers, permit challenges and other conflicts as determined by Workgroup 2.  Baseline Due: December 31, 2004 Rechecks: June 30, 2005 and June 30, 2006 Responsible for Collecting: Workgroup 2	Method to track number of "other" conflicts to be developed by workgroup 2.

Target	APII Measure	Source
<b>ENVIRONMENT TARGET #1:</b> The Air Program sets data driven environmental goals and outcomes. By June 2005, demonstrate how the primary compliance document aids in meeting these goals and outcomes by fostering compliance, promoting improved environmental performance and rewarding businesses that go beyond compliance.	E1.1 By January 31, 2005, answer yes or no, has the air program set data driven environmental goals.  Baseline Due: N/A Check: January 31, 2005 Responsible for Collecting: Workgroup 5	Note: environmental goals and measures will be determined by the Management Workgroup (#5). Please see attached list of recommended measures in Appendix 1.
	E1.2 APII will be responsible until June 30, 2006 for measures recommended by Workgroup 5 that demonstrate how the primary compliance document aids in meeting the environmental goals.  Baseline Due: June 30, 2005 Rechecks: June 30, 2006 Responsible for Collecting: Workgroup 5	
<b>ENVIRONMENT TARGET #2:</b> By January 2005, provide data on the web, which shows the relationship between local air pollution levels and public health. This will be continually evaluated and updated.	E2.1 By January 31, 2005, answer yes or no, is appropriate, accurate, and timely data available on the internet.  Baseline Due: N/A Check: January 31, 2005 Responsible for Collecting: Workgroup 2	Suggested: a GIS display, analysis of ambient air monitoring data and public health data (hospital admissions, mortality, etc.); forecasting of air quality including predictions of ozone action days and high particulate matter emission days. Workgroup 2 will coordinate the gathering of this data in collaboration with DHFS.
	E2.2 Level of customer satisfaction with the information posted.  Baseline Due: June 30, 2005 Rechecks: June 30, 2006 Responsible for Collecting: Workgroup 2	Set up feedback loop process on web site to gather information on satisfaction level with site. Follow up with customers by ways of focus groups or survey. This will occur during the biennial program review.

Target	APII Measure	Source
<b>FINANCIAL TARGET #1:</b> By June 2006, reduce the hours spent per permit review, renewal, and revision by 20-40% each, while providing equal or better environmental protection.	F1.1 Track number of the hours spent per individual permit action on an annual program-wide basis. Permit actions include operation permit review, operation permit renewal, operation permit revision, construction permit review, and construction permit revision.  Baseline Due: June 30, 2004 Rechecks: June 30, 2005 and June 30, 2006 Responsible for Collecting: Workgroup 4	Sample equation Hrs per op permit review= (total hours spent in FY03 on operation permit review time code AMES01)/(number of operation permits issued in FY03 as reported on APS)
	F1.2 Track the annual emission rates at regulated facilities and correlate data with selected economic indicators.  Baseline Due: September 30, 2004 (for FY04) Rechecks: June 30, 2005 and June 30, 2006 Responsible for Collecting: Workgroup 5	Use AEMS data to track annual emissions at regulated facilities. Data should be gathered in a manner that supports individual workgroup needs (See Source information fo Innov/Learning Target 2.)
	F1.3 Track the compliance rates at regulated facilities.  Baseline Due: September 30, 2004 (for FY04) Rechecks: June 30, 2005 and June 30, 2006 Responsible for Collecting: Workgroup 5	Use WACD and Compliance Certification Reports to track compliance rates: number of certifying facilities in compliance divided by the total number of certifying facilities.
<b>FINANCIAL TARGET #2:</b> By June 2006, reduce by 40-50% the need to revise or modify permits. This could be accomplished by: sharing draft permits; incorporating flexibility; utilizing, modifying, or expanding exemptions; offering alternatives; or refining existing regulations. Evaluate the results of these strategies to ensure that they are consistent with our environmental and public input goals.	F2.1 From a selected subset of facilities that have requested and/or been issued a permit revision or modification, determine the percent reduction in the number of facilities required to obtain the same permit under today's rules. By September 30, 2004, define the subset of permit modifications, revisions and/or revision requests. By June 30, 2006, evaluate the subset and determine the percent reduction. The original subset will be reevaluated by June 30, 2006 to determine the need for additions and/or deletions.  Baseline Due: September 30, 2004 Rechecks: June 30, 2006 Responsible for Collecting: Workgroups 3 & 4	Permit review documents.  Use the Air Permit software to identify the subset of permit modifications, revisions and/or revision requests. To provide a meaningful baseline, the subset should be representative of the mix and type of permit actions requested under today's rules (YR 2004) and reevaluated annually (if necessary) to remain current.
	F2.2 Track the number of operation permit revision requests and the numbers of construction/modification permit applications submitted at each permitted (or nonexempt) facility.  Baseline Due: September 30, 2004 Rechecks: June 30, 2005 and June 30, 2006 Responsible for Collecting: Workgroup 4	Use this data as an indicator. A rise in the number of permit actions should be investigated to see if it is caused by implementation of rules, procedures, breakdown in communication, inadequate training, etc. Steps should be taken to reduce permit actions if deemed appropriate.

Target	APII Measure	Source
<b>FINANCIAL TARGET #3:</b> Continue allocating resources in alignment with funding constraints, to support program priorities and customer needs.	F3.1 Quarterly workplan v. PALs v. authorized positions report to AMT, by funding source. Goal -- PALs is within 10% of Workplan  Baseline Due: September 30, 2004 (for FY04) Rechecks: December 31, 2004; March 31, 2005; June 30, 2005; September 30, 2005; December 31, 2005; March 31, 2006; June 30, 2006  Responsible for Collecting: Workgroup 5	Sheri Stach to run report on automated workplanning and PALs databases.
	F3.2 Semi-annual Grant & Grant-Match report to AMT. Goal -- Grant is earned 100%, Grant is matched at required level.  Baseline Due: June 30, 2004 Rechecks: December 31, 2004; June 30, 2005; December 31, 2005; June 30, 2006  Responsible for Collecting: Workgroup 5	Sheri Stach to develop report each December and June.
	F3.3 Semi-annual report to AMT on dollars spent by funding source v. spending authority of funding source. Goal -- spending is aligned with spending authority for each funding source, and spending within a funding source is spent on activities authorized under that funding source.  Baseline Due: June 30, 2004 Rechecks: December 31, 2004; June 30, 2005; December 31, 2005; June 30, 2006  Responsible for Collecting: Workgroup 5	Sheri Stach to develop report each December and June.
	F3.4 Evaluate level of customer satisfaction with staffing levels for the services that are important to them.  Baseline Due: December 31, 2005 Rechecks: June 30, 2006 Responsible for Collecting: Workgroup 5	Follow up with customers by ways of focus groups or survey. This will occur during the biennial program review.

Target	APII Measure	Source
	<p>F3.5 Measure the backlog of uncompleted program commitments for each year. This should include commitments for issuance, renewal and revisions of primary compliance documents as well as commitments for compliance activities. Primary compliance documents should include: traditional major and minor permits; general and registration permits; ERPs, Green Tier agreements, and EMS permits; and exemption confirmation letters requested by facilities.</p> <p>Baseline Due: September 30, 2004 (for FY04)  Rechecks: June 30, 2005 and June 30, 2006  Responsible for Collecting: Workgroup 5</p>	<p>Measure annually using the APS, WACD, and workplans. Commitments for permits are defined as meeting statutory or rule deadlines for responding. Commitments for Full Compliance Evaluations (FCE's) are according to the WDNR CMS Plan and annual FCE list. Commitments for other alternative tools shall be defined in the baseline.</p>
<p><b>INNOVATION AND LEARNING TARGET #1:</b> By February 2005, define the skill sets and organizational culture needed for staff and managers to work effectively and consistently with permits and other regulatory strategies. By December 2005, ensure that staff and managers have and maintain the skills defined.</p>	<p>IN1.1 By February 28, 2005 answer yes or no, have the skill sets, competencies, and organizational culture been defined.</p> <p>Baseline Due: N/A  Check: February 28, 2005  Responsible for Collecting: Workgroup 5</p>	
	<p>IN1.2 By December 2005, develop and administer an evaluation system to determine whether managers and staff have achieved the desired competency levels.</p> <p>Baseline Due: February 28, 2005  Rechecks: December 31, 2005; June 30, 2006  Responsible for Collecting: Workgroup 5</p>	<p>Management Workgroup 5 to develop evaluation system.</p> <p>The evaluation system may be incorporated into the established individual performance review cycle. The 360-degree evaluation may be a useful tool. Data from the agency customer feedback line may also be useful.</p>
	<p>IN1.3 Evaluate level of customer satisfaction with our culture.</p> <p>Baseline Due: December 31, 2004  Rechecks: June 30, 2006  Responsible for Collecting: Workgroup 5</p>	<p>Follow up with customers by ways of focus groups or survey. This will occur during the biennial program review. .</p>

Target	APII Measure	Source
<b>INNOVATION AND LEARNING TARGET #2:</b> By June 2006, the Air Program will have available a registration permit program and at least two or more other regulatory alternatives to traditional permitting for qualifying sources. Such alternatives will provide equal or better environmental protection and opportunity for public input.	IN2.1 By June 30, 2006 answer yes or no, has a registration permit program been developed and count how many registration permits have been issued to facilities.  Baseline Due: N/A Check: June 30, 2006 Responsible for Collecting: Workgroup 11	Use new IT system to track number of facilities covered under registration permits.
	IN2.2 By June 30, 2006 answer yes or no, at least two alternative regulatory tools have been developed and are being used by at least 1 facility. Such tools should <u>not</u> include traditional permits, consolidated construction/operation permits, expanded general permits, or registration permits.  Baseline Due: N/A Check: June 30, 2006 Responsible for Collecting: Workgroup 8	
	IN2.3 At each facility where an alternative regulatory tool is used, track whether emissions have been reduced or eliminated since use of the alternative tool. Track over a 5-year period. Conduct an analysis of the cause of emissions reductions, specifically whether the reduction was due to the use of the alternative regulatory tool and would not otherwise have occurred.  Baseline Due: For each facility prior to use of alternative tool Rechecks: June 30, 2006 Responsible for Collecting: Workgroup 8	At each facility where an alternative regulatory tool is used, use AEMS to establish a baseline emission inventory for the facility. Use the facility's annual consolidated reporting to track whether emissions have been reduced or eliminated since use of the alternative tool. Track over a 5-year period. Make adjustments to get desired results.
	IN2.4 At each facility that uses an alternative regulatory tool, track level of public satisfaction with meaningful participation.  Baseline Due: N/A Check: At each facility after issuance of new tool Responsible for Collecting: Workgroup 8	At each facility that uses an alternative regulatory tool, track public satisfaction with meaningful participation by a means that should be developed as part of the implementation of the new tool (such as hits on a facility specific web site, sending out questionnaires to interested public, etc.)

Target	APII Measure	Source
	<p>IN2.5 By June 30, 2006, answer yes or no, were benefit analyses completed prior to implementation for: any new alternative tools; registration permits; the increased use of general permits and exemptions; and streamlined traditional permits.</p> <p>Baseline Due: N/A Check: June 30, 2006 Responsible for Collecting: Workgroups 3 &amp; 4</p>	<p>The benefit analysis should include an estimate of the development costs, implementation costs (including staffing requirements), savings to the regulated facility, expected environmental improvements, public satisfaction, and permittee satisfaction.</p>
	<p>IN2.6 Track the annual emission rates at regulated facilities and correlate data with selected economic indicators.</p> <p>Baseline Due: September 30, 2004 (for FY04) Rechecks: June 30, 2005 and June 30, 2006 Responsible for Collecting: Workgroup 5</p>	<p>Use AEMS data to track annual emissions at regulated facilities. Information gathered should meet the needs of the workgroups who will use the data. For instance, some workgroups will need emissions data for a specific facility, some will need data for specific sectors, and some workgroups will need data for a certain size range of facilities.</p>
	<p>IN2.7 Track the compliance rates at regulated facilities.</p> <p>Baseline Due: September 30, 2004 (for FY04) Rechecks: June 30, 2005 and June 30, 2006 Responsible for Collecting: Workgroup 5</p>	<p>Use WACD and Compliance Certification Reports to track compliance rates: number of certifying facilities in compliance divided by the total number of certifying facilities.</p>

Target	APII Measure	Source
<b>INNOVATION AND LEARNING TARGET #3:</b> Whenever a new permit regulation or regulatory strategy is developed or updated, the Air Program actively works with partners to ensure there is effective communication, opportunity for input, and an appropriate level of education.	IN3.1 By January 31, 2005 answer yes or no, has the air program defined appropriate communication and/or education methods for different degrees of permit regulation changes.  Baseline Due: N/A Check: January 31, 2005 Responsible for Collecting: Workgroup 2	
	IN3.2 On a semi-annual basis the first year, and annually thereafter, determine the percentage that communicated and/or educated partners using the appropriate method as specified above.  Baseline Due: N/A Rechecks: June 30, 2005, December 31, 2005, June 30, 2006 Responsible for Collecting: Workgroup 2	Assign someone to review all new or changed regulations to determine the percentage that communicated and/or educated partners using the appropriate method as specified above.

AEMS – Air Emissions Management System

AMT – Air Management Team

APM – Air Permit Management Software

APS – Air Permit Software

APS – Air Permit Streamlining

Conop or ConOP or Con/OP – the operation permit that replaces a construction permit upon demonstration of compliance.

DHFS – Department of Health and Family Services

EPA – Environmental Protection Agency

GIS – Geographic Information System

PAL – Plant-wide applicability limit

PALs – Payroll authorization and leave system

PSC – Public Service Commission

WACD – Wisconsin Air Compliance Database

## **Appendix C**

### **Public Participation Summaries for Developing the Stationary Source Strategy**

In developing the Stationary Source Strategy, the Department sought input from external stakeholders as well as internal permits/compliance staff. Below are summaries of the initial meetings held with internal staff and external stakeholders. In addition to these meetings, the Department held meetings with regulated facilities on three more occasions to review initial concepts for the Strategy and to identify issues that still needed to be addressed.

#### Stationary Source Strategy Summary of Internal Focus Group Meeting May 12, 2004

The Stationary Source Strategy Workgroup met with DNR Program staff in order to gather information and ideas to help us develop a strategy for development and implementation of alternative regulatory tools. A total of 18 people participated in the focus group. Attendees were mostly from the air program. Two participants from the air and waste division attended. The meeting was held via video conference simultaneously broadcast from three locations across the state, Madison, Green Bay, and Wausau.

Our objectives for this meeting were:

- To explain different alternative regulatory tools and identify others we need to consider.
- To examine the differing needs of facilities, the regulatory agency, and the public. These needs include things such as timeliness, opportunity for public comment, administrative costs, etc.
- To look at how different regulatory tools can be applied to address these differing needs.
- To begin to categorize facilities based on emission rates as well as the complexity of regulations that apply to them.
- To look at how different regulatory tools can be used with different facility types.

#### **1. Methodology**

The main purpose of this focus group meeting was to gain insight into which alternative regulatory tools to include in the stationary source strategy and what types of facilities might fit best with the various alternatives. To do this we created a matrix with needs across the top and alternative tools down the side. We asked participants to rate each tool as to its ability to meet the given need better than the current permitting system. Similarly, we created a second matrix to help us categorize facilities and asked participants to list which tools they felt could meet the needs of each of the nine categories of facilities. Between exercises, we left as much time as possible for open discussion.

#### **2. Results**

The meeting results were very interesting. The attached tables show how participants rated different tools with respect to meeting various needs (Table 1,) and how participants felt different facility types could use the differing tools (Table 2.)

Table 1 results: Table 1 below shows the average ranking each tool received with regard to all of the needs within each stakeholder category (i.e., industry, DNR, or public). The table also shows the average ranking each tool received with regards to all stakeholder needs combined. From the



perspective of internal folks, registration permits, general permits and bubble permits were perceived to best satisfy industry needs. Internals felt that ERP, general permits, and bubble permits would meet their own needs best. Green Tier rated high for internal perceptions of public needs. Overall, General Permits, ERP, and Green Tier ranked highest. It should be noted, though, participants felt that they needed to understand the alternative tools better and the the results may have been skewed towards tools they understood better.

Table 2 results: In general, participants felt that registration permits, general permits, and facility –wide caps/bubble permits as being the most useful for different types of facilities. Registration permits were felt to be most applicable to small emitters of all types. Bubble permits were felt to be most applicable to large emitters of all types. General permits were felt to be most useful for facilities that have similar processes and regulations across a source category. Also rating high were environmental management systems (EMS) and green tier. Most participants felt that these regulatory tools could best be used with larger emitting facilities. Permit by rule also generated a fair amount of interest, mostly for small and medium emitting sources.

Besides ranking regulatory tools, we also answered questions about regulatory tools and their possible uses, listened to ideas for how to use various tools, and gained useful information on possible interfaces with other air program activities such as stationary source modeling and State Implementation Plan (SIP) issues.

### **3. Conclusions**

Participants felt the focus group meeting needed improvement in two areas. First, they felt the explanation of the alternative tools was not adequate. This may have resulted in participants rating tools they understood as being more useful than tools they were unfamiliar with. Second, the participants felt we should have allowed more time for discussion. Future meetings are planned where we can have a looser agenda with lots time for exchange of ideas.

These results have allowed us to draw some conclusions as to how DNR personnel view applicability of alternative regulatory tools. In general, participants have a positive view of alternative regulatory strategies and are anxious to start working on ways to use and implement them. DNR staff expect that the Department will move ahead with registration permits, a consolidated construction/operation permit, and general construction permits. There is considerable enthusiasm for cap/bubble permits and for the use of Green Tier and EMS as alternative regulatory tools. As we move forward we will need to consider modeling issues such as increment consumption of new sources, and how alternative tools impact the State Implementation Plan (SIP).

Industry Type/Source Characteristics	B. Level of Emissions		
	Low	Medium	XIV. High
Similar processes and regulations across source category	<b>1-(12); 2-(9); 3-(14); 4-(5); 5-(2); 6-(6); 7-(3); 8-(6); 9-(1); 10-(1); 11-(1)</b>	<b>1-(6); 2-(1); 3-(10); 4-(6); 5-(8); 6-(3); 7-(6); 8-(5); 9-(2); 10-(4); 11-(2)</b>	<b>1-(0); 2-(1); 3-(4); 4-(1); 5-(10); 6-(1); 7-(7); 8-(1); 9-(8); 10-(11); 11-(3)</b>
Dynamic processes, usually with multiple pollutants	<b>1-(9); 2-(6); 3-(5); 4-(4); 5-(4); 6-(8); 7-(3); 8-(7); 9-(0); 10-(1); 11-(0)</b>	<b>1-(5); 2-(1); 3-(4); 4-(5); 5-(6); 6-(4); 7-(5); 8-(4); 9-(2); 10-(3); 11-(1)</b>	<b>1-(0); 2-(1); 3-(1); 4-(3); 5-(9); 6-(1); 7-(7); 8-(1); 9-(10); 10-(12); 11-(3)</b>
General manufacturing	<b>1-(9); 2-(7); 3-(7); 4-(3); 5-(4); 6-(7); 7-(3); 8-(7); 9-(0); 10-(0); 11-(1)</b>	<b>1-(6); 2-(1); 3-(7); 4-(4); 5-(9); 6-(5); 7-(5); 8-(6); 9-(1); 10-(2); 11-(2)</b>	<b>1-(0); 2-(1); 3-(2); 4-(2); 5-(9); 6-(1); 7-(8); 8-(1); 9-(9); 10-(10); 11-(3)</b>

To complete the table, fill in the number of the regulatory tool you think best fits for the given industry type and emissions level.

1. Registration Permits
2. Incidental Emitters
3. General Permits
4. ERP
5. Cap/Bubble
6. Simple Minor Source
7. Consolidated Permits
8. Permit by Rule
9. Green Tier
10. EMS-Permit
11. Write your Own Permit



**Stationary Source Strategy  
Summary of External Focus Group Meeting  
May 14, 2004**

The Stationary Source Strategy Workgroup met with external stakeholders in order to gather information and ideas to help us develop a strategy for development and implementation of alternative regulatory tools. A total of 21 people from industry, trade associations, environmental/public interest groups and the Department participated in the focus group.

Our objectives for this meeting were:

- To explain different alternative regulatory tools and identify others we need to consider.
- To examine the differing needs of facilities, the regulatory agency, and the public. These needs include things such as timeliness, opportunity for public comment, administrative costs, etc.
- To look at how different regulatory tools can be applied to address these differing needs.
- To begin to categorize facilities based on emission rates as well as the complexity of regulations that apply to them.
- To look at how different regulatory tools can be used with different facility types.

**1. Methodology**

The main purpose of this focus group meeting was to gain insight into which alternative regulatory tools to include in the stationary source strategy and what types of facilities might fit best with the various alternatives. To do this we created a matrix with needs across the top and alternative tools down the side. We asked participants to rate each tool as to its ability to meet the given need better than the current permitting system. Similarly, we created a second matrix to help us categorize facilities and asked participants to list which tools they felt could meet the needs of each of nine categories of facilities.

Based on suggestions from the participants we added exemptions and construction permit waivers (allow construction before issuance of a permit) to the matrices. We also had each stakeholders rank the needs of the group they represent (e.g., industry representatives rank their needs from 1 to 10 or from low to high) depending on their perceived importance.

Between exercises, we left as much time as possible for open discussion.

**2. Results of Exercises**

Table 1 below shows the average ranking each tool received with regard to all of the needs within each stakeholder category (i.e., industry, DNR, or public). A rating of 3 means that the regulatory tool satisfies a need better than current permit tools. A rating of 2 means that a regulatory tool satisfies a need equally as well as current permit tools. A rating of 1 means that a regulatory tool satisfied a need more poorly than current permit tools. The table also shows the average ranking each tool received with regards to all stakeholder needs combined.



**Table 1**

<b>Regulatory Tool</b>	<b>Industry Needs</b>	<b>DNR Needs</b>	<b>Public Needs</b>	<b>All Needs</b>
Registration Permit	2.6	2.5	2.5	<b>2.5</b>
Incidental Emitters	2.4	2.5	2.3	<b>2.3</b>
General Permits	2.6	2.6	2.5	<b>2.5</b>
ERP	2.2	2.4	2.3	<b>2.3</b>
Bubble	2.6	2.5	2.5	<b>2.5</b>
Simplified Permit	2.5	2.4	2.4	<b>2.4</b>
Consolidated Permit	2.3	2.2	2.2	<b>2.2</b>
Permit by Rule	2.5	2.5	2.4	<b>2.4</b>
Green Tier	2.0	2.4	2.2	<b>2.2</b>
EMS Permit	2.0	2.4	2.3	<b>2.3</b>
Exemption	2.6	2.4	2.4	<b>2.4</b>
Waiver	2.4	2.1	2.1	<b>2.1</b>

As can be seen from the table above, registration permits, general permits and bubble permits were perceived to best satisfy stakeholder needs as a whole. Simplified permits (for minor sources), permit by rule, and permit exemptions were also perceived to highly satisfy stakeholder needs. It should be noted, though, that all of the alternative regulatory tools that were investigated in this meeting were perceived to satisfy the needs of stakeholders better than current permits. It should also be noted that the numbers in Table 1 represent the answers of 14 industry representatives and only one environmental/public interest representative. Table 2 contains the responses given by the environmental/public interest representative regarding public needs.

**Table 2**

<b>Regulatory Tool</b>	<b>Public Needs</b>
Registration Permit	2.2
Incidental Emitters	1.3
General Permits	1.3
ERP	2.7
Bubble	3
Simplified Permit	1.3
Consolidated Permit	1.5
Permit by Rule	2
Green Tier	3
EMS Permit	3
Exemption	2
Waiver	2

These results show that Bubbles, Green Tier, EMS permits and ERPs were perceived to best satisfy the needs of the public. Incidental emitters, general permits and simplified permits were perceived to satisfy the least needs.

Next, participants were asked to list the top 3 regulatory tools they felt would fit each of nine facility categories. Table 3 below shows the alternative regulatory tools that were perceived to be the "best-fit" for these facility categories.

**Table 3**

Industry Type / Source Category	Level of Emissions / Risk		
	Low	Medium	High
Similar processes & regulations across source category	Registration Permits General Permits Exemptions	Registration Permits General Permits Simplified Permits	General Permits Bubble Waiver
Dynamic processes, usually with multiple pollutants	Registration Permits General Permits Bubble	Bubble Waivers Simplified Permits	General Permits Bubble Waivers
Complex processes or operations, but stable operations	Registration Permits General Permits Bubble	Bubble Consolidated Permits Waivers	Bubble Consolidated Permits Waivers EMS Permits

Participants were then asked to rank the needs for the stakeholder group they were a member of. Industry representatives identified "increased permit timeliness", "increased flexibility", and "understandable permits" as the most important industry needs. Based on the rankings they gave each of the tools during the earlier exercise, a number of tools appeared to satisfy these needs quite well, including registration permits, general permits, bubbles, simplified minor source permits and permit exemptions.

Public representatives identified "improved public health/air quality", "improved public input opportunities" and "increased transparency" as the most important public needs. Based on the rankings they gave each of the tools during the earlier exercise, a number of tools appear to satisfy these needs quite well, including ERPs, bubbles, Green Tier and EMS permits.

### Notes from Discussions

Some very interesting and constructive discussions took place at this meeting. The major points made at the meeting are shown below:

#### General Thoughts

- The most important things to industry are being able to make changes quickly to meet market demands.
- Reduced monitoring and recordkeeping are also important. With the current economy, companies have been forced to do more with less. Excessive monitoring and recordkeeping poses a great cost to companies.
- Registration permits, consolidated permits and general permits seem to be a win-win situation for everyone.

- Many companies do not have the resources to get involved in Green Tier, an Environmental Results Program (ERP), or an Environmental Management System (EMS) type permit. There seems to be a lot of up-front costs for these types of tools.
- The group discussed whether not including all applicable requirements in a permit is a lose/lose situation. Some felt that getting the permit quickly and not delaying projects was more important than receiving a permit with all applicable requirements listed. Some felt that all applicable requirements need to be in all permits that all parties (DNR, industry, public) know what the company is supposed to be doing. One participant remarked that if a alternative regulatory tool does not expressly list all applicable requirements, that seems to be a lose/lose situation for everyone.
- Form type permits help compliance inspectors.

#### Suggestions

- The bubble, or facility-wide cap, concept seems to satisfy the most overall needs. This tools should be used.
- The Department should look to simplify some rules that are complex.
- Having clear, understandable, requirements in a permit not only helps industry, it helps the DNR (compliance engineers), the public, and EPA.
- The DNR should focus on permit by rule and exemptions immediately as these are areas where we could reduce the permit workload for the DNR and provide industry flexibility to make changes without going through the permitting process.
- General operation permits for Part 70 sources must have a 5 year term to satisfy Title V requirements, but general operation permits for non-Part 70 sources should not expire unless DNR finds a specific need to set an expiration date.

#### Thoughts about implementations of regulatory tools

- Are there going to be problems with getting EPA approval for these regulatory tools? Will the State Implementation Plan (SIP) need to be changed? *DNR response: We will work with EPA to get approval for any program we are looking to implement. We have lots of flexibility to make changes to our permit program as long as they change wouldn't affect the SIP. In cases where a SIP change was needed, we would pursue that.*
- Are there statutory changes that will be needed? *DNR response: In some cases, yes.*
- Developing general permits can be a complex process - getting a permit that the Department, industry and the public all agree with.

Green Tier, Environmental Results Programs (ERPs), and Environmental Management System (EMS) permits are the most creative, but the Department needs to change its processes and culture for these types of tools

## **Appendix D**

### **List of Current Wisconsin Permit Exemptions**

**(1) SPECIFIC CATEGORIES OF EXEMPT SOURCES.** The following categories of direct sources are exempt from the requirement to obtain a construction permit unless construction, reconstruction, replacement, relocation or modification of the source is prohibited by any permit, plan approval or special order applicable to the source:

- (a) One or more external combustion furnaces at a source which will not burn any hazardous waste identified under ch. NR 605, or which have been issued a license or licenses under ch. NR 680, and if no individual furnace is designed to burn the following fuels at more than the maximum rates indicated:
  - 1. Coal, coke or other solid fuels, except wood, at a heat input rate of not more than 1.0 million Btu per hour.
  - 2. Wood alone or wood in combination with gaseous or liquid fossil fuels at a heat input rate of not more than 5.0 million Btu per hour.
  - 3. Residual or crude oil at a heat input rate of not more than 5.0 million Btu per hour.
  - 4. Distillate oil at a heat input rate of not more than 10 million Btu per hour.
  - 5. Gaseous fossil fuel at a heat input rate of not more than 25 million Btu per hour.
- (b) Equipment which is designed to incinerate solid wastes, which are not pathological wastes, infectious wastes, municipal wastes or hazardous wastes under ch. NR 605, at a rate of not more than 500 pounds per hour.
- (c) Equipment which is designed to dry grain at a rate of not more than 1,500 bushels per hour at 5% moisture extraction and which is not subject to s. NR 440.47.
- (ce) Grain storage facilities with an average tonnage of grain received of less than 5500 tons per month and which are not subject to s. NR 440.47. The average monthly tonnage of grain received shall be calculated by dividing the cumulative tonnage of grain received since January 1 of each year by 12. The average monthly tonnage of grain received does not include product that the facility sells, acting as a broker, which is never actually received at the grain storage facility.
- (cm) Grain processing facilities with an average tonnage of grain received of less than 4500 tons per month and which are not subject to s. NR 440.47. The average monthly tonnage of grain received shall be calculated by dividing the cumulative tonnage of grain received since January 1 of each year by 12. The average monthly tonnage of grain received does not include product that the facility receives that is packaged when received and remains packaged.
- (d) Portland concrete batch plants which produce or will produce less than 20,000 cubic yards of concrete per month averaged over any 12 consecutive month period.
- (e) Storage tanks containing organic compounds with a true vapor pressure in pounds per square inch absolute at 70°F of less than 1.52 with a combined total tankage capacity of not more than 40,000 gallons.
- (f) VOC storage tanks with a combined total tankage capacity of not more than 10,000 gallons of volatile organic compounds.
- (g) Painting or coating operations, including associated cleaning operations, which emit or will emit not more than 1666 pounds of volatile organic compounds per month, which are measured prior to entering any emission control devices,

unless the emissions of any single hazardous air pollutant listed under section 112(b) of the act (42 USC 7412(b)) equal or exceed 10 tons per year or the cumulative emissions of hazardous air pollutants listed under section 112(b) of the act equal or exceed 25 tons per year.

- (gm) Automobile refinishing operations, including associated cleaning operations, which emit or will emit not more than 1666 pounds of volatile organic compounds per month, which are measured prior to entering any emission control devices, unless the emissions of any single hazardous air pollutant listed under section 112(b) of the act (42 USC 7412(b)) equal or exceed 10 tons per year or the cumulative emissions of hazardous air pollutants listed under section 112(b) of the act equal or exceed 25 tons per year.
- (h) Graphic arts operations, including associated cleaning operations, which emit or will emit not more than 1666 pounds of volatile organic compounds per month, which are measured prior to entering any emission control devices, unless the emissions of any single hazardous air pollutant listed under section 112(b) of the act equal or exceed 10 tons per year or the cumulative emissions of hazardous air pollutants listed under section 112(b) of the act equal or exceed 25 tons per year.
- (i) Equipment used or to be used for the purpose of testing or research provided that all of the following requirements are met:
  - 1. A complete application for exemption is made describing the proposed testing or research and including an operating schedule and the types of quantities of emissions anticipated.
  - 2. The Department determines that the equipment to be used and the anticipated emissions from the testing or research will not present a significant hazard to public health, safety or welfare or to the environment and approves the application for exemption.
  - 3. The equipment will be in operation for less than 12 months.
  - 4. The Department approves the application for exemption submitted under subd. 1. The Department shall approve or deny the application in writing within 45 days of receiving a complete application. The Department may provide public notice of an application for research and testing exemption, may provide an opportunity for public comment and an opportunity to request a public hearing and may hold a public hearing on any application under this paragraph. The Department shall make all nonconfidential information available to the public upon request.
- (j) A laboratory which emits volatile organic compounds, sulfur dioxide, carbon monoxide, nitrogen oxides or particulate matter or a combination thereof at a rate of less than 5.7 pounds per hour unless the emissions of any single hazardous air pollutant listed under section 112(b) of the act equal or exceed 10 tons per year or the cumulative emissions of hazardous air pollutants listed under section 112(b) of the act equal or exceed 25 tons per year. Hourly emissions shall be determined, based on the quantitative estimate of air contaminants before they enter any emission control devices, by dividing the total uncontrolled emissions which would have occurred during a calendar month by the total hours of operation of the laboratory during that calendar month. A laboratory is in operation if laboratory apparatus or equipment is in use.
- (k) Equipment whose primary purpose is to transport or sort paper.
- (L) Facilities for chlorination of municipal drinking water, the intake of once through industrial process or cooling water, or water for swimming pools, spas or other recreational establishments.

(m) The following procedures for the remediation or disposal of soil or water contaminated with organic compounds, provided the potential to emit, considering emission control devices, for any hazardous air contaminant listed in Table 1 to Table 5 of s. NR 445.04 is not greater than the emission rate listed in Table 1 to Table 5 of s. NR 445.04 for the air contaminant at the respective stack height, and the procedure is not subject to any standard or regulation under section 111 or 112 of the act (42 USC 7411 or 7412):

1. Landspreading of contaminated soil, including the agricultural landspreading of soil contaminated with pesticide or fertilizer.
2. Negative pressure venting of contaminated soil or bioremediation, provided the remediation is completed within 3 months or the potential to emit organic compounds from the remediation site is at a rate of not more than 5.7 pounds per hour, considering emission control devices.
3. Pilot testing of a negative pressure venting system provided the testing is limited to a total withdrawal of not more than 150,000 standard cubic feet (scf) of air.

Note: The total withdrawal may be determined by the equation: Total withdrawal (scf) = hours of operation of pilot test (hr) x average flow rate in cubic feet per minute at standard conditions (scfm) x 60 min/hr. An example is: 10 hours of operation x 250 scfm x 60 min/hr = 150,000 scf. When testing at multiple flow rates, determine the withdrawal for each flow rate and sum the withdrawals for a total withdrawal.

4. Landfilling of contaminated soil.
5. Installation and use of devices which remove organic compounds from a private or municipal potable water supply.
6. Installation and use of crop irrigation systems or dewatering wells to remediate contaminated water.
7. Installation and use of air strippers for treatment of contaminated water, provided the remediation is completed within 3 months or the potential to emit organic compounds from the remediation site is at a rate of not more than 5.7 pounds per hour, considering emission control devices.
8. Installation and use of any devices or techniques not listed in this paragraph which are used to remediate soil or water contaminated with organic compounds, if the device or technique is not portable and is not a thermal evaporation unit, and the remediation is completed within 3 months.
9. Installation and use of any technique or device to remediate soil or water contaminated with organic compounds as part of actions taken by EPA under the authority of the comprehensive environmental response compensation and liability act of 1980, 42 USC 9601 to 9675, by the Department under the authority of s. 289.67 or ch. 292, Stats., or by a responsible party in compliance with the requirements of an administrative order, consent decree or contract issued pursuant to the comprehensive environmental response compensation and liability act of 1980 or s. 289.67 or ch. 292, Stats.

Note: Even though these sources are exempt from permit requirements, they are still subject to the notification requirements under s. NR 419.07(2).

(n) Renovation or demolition operations involving friable asbestos containing material provided that the provisions of subd. 1. or 2. are met:



1. The amount of asbestos containing material is less than 260 linear feet on pipes or 160 square feet on other facility components.
2. If the amount of asbestos containing material is at least 260 linear feet on pipes or at least 160 square feet on other facility components, all of the following conditions are met:
  - a. Notice of intention is provided under s. NR 447.07.
  - b. The notice indicates that the project will meet all applicable requirements of ch. NR 447.
  - c. The fee required under s. NR 410.05(2) and (3) is submitted with the notice.
- (o) Batch cold cleaning equipment which does not use halogenated HAP solvent and has a total air to solvent interface of 1.0 square meters or less during operation.
- (om) Batch cold cleaning equipment which uses halogenated HAP solvent and meets both of the following requirements:
  1. The equipment has a total air to solvent interface of 1.0 square meters or less during operation.
  2. The equipment is not a major source or located at a major source, as defined in s. NR 460.02(24).
- (p) Batch open top vapor degreasing equipment which does not use halogenated HAP solvent and has a total air to vapor interface of 1.0 square meters or less during operation.
- (pm) Batch open top vapor degreasing equipment which uses halogenated HAP solvent and meets both of the following requirements:
  1. The equipment has a total air to solvent interface of 1.0 square meters or less during operation.
  2. The equipment is not a major source or located at a major source, as defined in s. NR 460.02(24).
- (pr) Conveyorized non-vapor degreasing and conveyorized vapor degreasing equipment which uses halogenated HAP solvent and is not a major source or located at a major source, as defined in s. NR 460.02(24).
- (q) Private alcohol fuel production systems as defined in s. 289.44(1)(c), Stats.
- (r) Perchloroethylene dry cleaning area sources as defined in s. NR 468.20(2)(am).
- (rm) Chromium electroplating area sources and chromium anodizing area sources as defined in s. NR 460.02(5).
- (s) Crematories.
- (t) Indirect malt dryers which are designed to burn fuels specified in par. (a) at a heat input rate less than the rates specified in par. (a).
- (u) Gasoline dispensing facilities which dispense gasoline or other petroleum products.
- (v) Bulk gasoline plants which distribute gasoline or other petroleum products.
- (w) Emergency electric generators powered by internal combustion engines which are fueled by gaseous fuels, gasoline or distillate fuel oil with an electrical output of less than 3,000 kilowatts.
- (x) Any quarry, mine or other facility where nonmetallic minerals are extracted that is not a ledge rock quarry or industrial sand mine.
- (y) Ledge rock quarries with actual production of less than 25,000 tons per month on a rolling 12 month average, or with actual operation of less than 365 days per 5 year period.
- (z) Industrial sand mines with actual production of less than 2,000 tons per month on a rolling 12 month average.

- (za) Fixed sand and gravel plants and fixed crushed stone plants with capacities of 25 tons per hour or less.
- (zb) Portable sand and gravel plants and portable crushed stone plants with capacities of 150 tons per hour or less.
- (zc) The addition or replacement of the following equipment at a nonmetallic mineral processing facility which has an operation permit or which has filed a complete application for an operation permit pursuant to ch. NR 407:
  - 1. Any crusher other than an initial crusher.
  - 2. Any grinding mill other than an initial grinding mill.
  - 3. Any screening operation.
  - 4. Any bucket elevator.
  - 5. Any belt conveyor.
  - 6. Any bagging operation.
  - 7. Any storage bin.
  - 8. Any grizzly.
  - 9. Any pan feeder.
  - 10. Any other nonmetallic mineral processing equipment subject to s. NR 440.688 other than an initial crusher or initial grinding mill.
- (zg) Equipment that temporarily increases steam generation capability at a source provided that all of the following conditions are met:
  - 1. The equipment will be installed and operated only when at least one of the permanent steam generating units at the source is out of service for maintenance, repair or an emergency.
  - 2. The equipment will not be operated for more than 3,200 hours and will be shut down and removed within 9 calendar months after installation.
  - 3. Only natural gas will be used as fuel in the equipment.
  - 4. The equipment will meet all applicable emission limits.
  - 5. All applicable monitoring requirements will be met during the equipment's period of use.
  - 6. Use of the equipment will not cause or exacerbate an exceedance of any ambient air quality standard or ambient air increment in s. NR 404.04 or 404.05.
  - 7. A complete application for exemption is submitted to the Department for approval. The application shall contain all of the following:
    - a. A description of the equipment.
    - b. The reason for the need to use the equipment.
    - c. A description of how the conditions in subds. 1. to 6. will be met.
  - 8. The Department approves the application for exemption submitted under subd. 7. The Department shall approve or deny the exemption in writing within 10 business days after receipt of a complete application.

**(2) GENERAL CATEGORY OF EXEMPT SOURCES.** In addition to the specific categories of exempt sources identified in sub. (1), no construction permit is required prior to commencing construction, reconstruction, replacement, relocation or modification of a direct source if all of the following conditions are met:

- (a) The construction, reconstruction, replacement, relocation or modification of the source is not prohibited by any permit, plan approval or special order applicable to the source.
- (b) The maximum theoretical emissions from the source for sulfur dioxide or carbon monoxide do not exceed 9.0 pounds per hour for each air contaminant.



- (c) The maximum theoretical emissions from the source for particulate matter, nitrogen oxides or volatile organic compounds do not exceed 5.7 pounds per hour for each air contaminant.
- (cm) The maximum theoretical emissions from the source for PM<sub>10</sub> do not exceed 3.4 pounds per hour.
- (d) The maximum theoretical emissions from the source for lead do not exceed 0.13 pounds per hour.
- (f)
  - 1. The maximum theoretical emissions from the source for any hazardous air contaminant listed in Table A, B or C of s. NR 445.07 are not greater than the emission rate for the air contaminant listed in column (c), (d), (e) or (f) of Table A, B or C of s. NR 445.07 for the respective stack height or the owner or operator of the source meets the compliance demonstration and notification requirements of s. NR 445.08(7)(b).  
**Note:** Owners and operators of facilities emitting less than 3 tons of volatile organic compounds and 5 tons of particulate matter on an annual basis, or who engage in limited or no manufacturing activities, should refer to s. NR 445.11 prior to determining applicable requirements under this paragraph.
  - 2. The source is not subject to a best available control technology or lowest achievable emission rate requirement in s. NR 445.07(1)(c), (2), (3) or (4).
  - 3. The source does not combust fuel oil in a compression ignition internal combustion engine subject to a best available control technology requirement in s. NR 445.09(3)(a).
  - 4. The source does not combust municipal solid waste, as defined in s. NR 500.03(86), or infectious wastes.
- (h) The source is not subject to any standard or regulation under section 111 or 112 of the act (42 USC 7411 or 7412). If a source is subject to regulations or requirements under section 112 only because of section 112(r) of the act (42 USC 7412(r)), the source is not for that reason required to obtain a construction permit under this paragraph.

## Appendix E

### Minor Source Construction Permit Thresholds in EPA Region V States

Table 1, below, contains the current general construction permit thresholds used by EPA Region V states. Table 2 contains the thresholds converted to a tons per year basis, for comparison with Wisconsin's proposed thresholds.

Table 1: General Construction Permit Thresholds used in EPA Region V states

State	Basis	VOC	PM	PM <sub>10</sub>	SO <sub>2</sub>	NOx	CO	Lead
Wisconsin	MTE	5.7 lb/hr	5.7 lb/hr	3.4 lb/hr	9.0 lb/hr	5.7 lb/hr	9.0 lb/hr	0.13 lb/hr
Illinois	-	-	-	-	-	-	-	-
Indiana	PTE	10 ton/yr <sup>7</sup>	5 ton/yr	5 ton/yr	10 ton/yr	10 ton/yr	25 ton/yr	0.2 ton/yr
Michigan	Actuals <sup>8</sup>	1,000 lb/mo	1,000 lb/mo <sup>9</sup>	1,000 lb/mo	1,000 lb/mo	1,000 lb/mo	1,000 lb/mo	1,000 lb/mo
Minnesota	PTE	2.28 lb/hr	-	0.85 lb/hr	2.28 lb/hr	2.28 lb/hr	5.7 lb/hr	0.025 lb/hr
Ohio <sup>10</sup>	PTE	10 lb/day	10 lb/day	10 lb/day	10 lb/day	10 lb/day	10 lb/day	10 lb/day

Table 2: General Construction Permit Thresholds Converted to Tons per Year

State	Basis	VOC	PM	PM <sub>10</sub>	SO <sub>2</sub>	NOx	CO	Lead
Wisconsin	MTE	10 ton/yr	10 ton/yr	10 ton/yr	10 ton/yr	10 ton/yr	10 ton/yr	10 ton/yr
Illinois	-	-	-	-	-	-	-	-
Indiana	PTE	10 ton/yr	5 ton/yr	5 ton/yr	10 ton/yr	10 ton/yr	25 ton/yr	0.2 ton/yr
Michigan	Actuals	6 ton/yr	6 ton/yr	6 ton/yr	6 ton/yr	6 ton/yr	6 ton/yr	6 ton/yr
Minnesota	PTE	10 ton/yr	-	3.75 ton/yr	10 ton/yr	10 ton/yr	25 ton/yr	0.1 ton/yr
Ohio	PTE	1.8 ton/yr	1.8 ton/yr	1.8 ton/yr	1.8 ton/yr	1.8 ton/yr	1.8 ton/yr	1.8 ton/yr

<sup>7</sup> 10 tons per year if no air pollution control equipment, otherwise 5 tons per year with controls

<sup>8</sup> Exemption level is 1,000 pounds per month if emissions are uncontrolled or 500 pounds per month if emissions are controlled.

<sup>9</sup> Note: for non-carcinogenic particulate matter, there is also an exemption if:

- (1) the particulate emissions are controlled by an appropriately designed and operated fabric filter collector or an equivalent control system which is designed to control particulate matter to a concentration of less than or equal to 0.01 pounds of particulate per 1,000 pounds of exhaust gases and which do not have an exhaust gas flow rate more than 30,000 actual cubic feet per minute,
- (2) the visible emissions are less than 5% opacity, and
- (3) the initial threshold screening level for each particulate air contaminant, excluding nuisance particulate, is more than 2.0 micrograms per cubic meter.

<sup>10</sup> Ohio is currently considering raising all construction permit thresholds to 10 tons per year.

**Appendix F**  
**Example of a General Permit**

**AIR POLLUTION CONTROL OPERATION PERMIT**

FACILITY IDENTIFICATION NUMBER (FID): [XXXXXXXXXX]

PERMIT NUMBER. This is a General Operation Permit. This General Operation Permit is not **issued** to an individual facility. This General Operation Permit will be **issued** once for use by sources that demonstrate that the source qualifies for coverage under this General Operation Permit. Therefore there is no FID or Permit Number associated with this General Operation Permit's issuance. This permit will be **released** to an individual applicant as Permit Number XXXXXXXXXX-G05A, where the nine letters of X represent the Facility Identification Number (FID) for the applicant and G05A represents the Small Heating Unit General Operation Permit **issued** in the State of Wisconsin.

PERMIT NUMBER: XXXXXXXXXX-G05A

STACK NUMBER S01 EMISSION UNIT NUMBER B01

TYPE: Part 70 General Operating Permit

In accordance with the provisions of Chapter 144, Wis. Stats. and Chapters NR 400 to NR 499, Wis. Adm. Code.:

Facility Name: Example Facility

Street Address: 123 Example Avenue  
Any City, Wisconsin 54321

Responsible Official, & Title: Joe Owner, President

is authorized to operate a small heating system in conformity with the conditions herein.

This General Operation Permit expires July 4, 2009.

Dated at Madison, Wisconsin, July 4, 2004.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES  
For the Secretary

By /s/  
Section Chief, Permits and Stationary Source Modeling



## **Preamble**

### **Previously Issued Operation Permits**

This permit supersedes any permits issued for operation of equipment listed in the general operation permit application submitted by the facility.

**Permit Shield** - Unless precluded by the Administrator of the USEPA, compliance with all emission limitations in this operation permit is considered to be compliance with all emission limitations established under ss. 144.30 to 144.426, Wis. Stats., and emission limitations under the federal clean air act, that are applicable to the source if the permit includes the applicable limitation or if the Department determines that the emission limitations do not apply. The following emission limitations were reviewed in the analysis and preliminary determination and were determined not to apply to this stationary source:

NR 445.05 Wis. Adm. Code. (Group 1 virgin fossil fuel combustion is exempt from the requirements of this chapter)

**Part I** -- This section contains specific emission limitations, requirements and conditions which all sources to which this permit is released must abide by. The legal authority for these limitations or methods follows them in (parenthesis).

**PART II** -- This section contains the general limitations that the permittee must abide by. These requirements are standard for most sources of air pollutants so they are included in this section with every permit.

## **PART I**

1) Gaseous or liquid fuel fired heating systems which commenced construction or were modified before April 1, 1972 which are outside Subregion 1 LMAQCR and Southeast Wisconsin Interstate AQCR are subject to the following requirements:		
<u>Pollutant</u>	<u>Applicable Citation</u>	<u>Limitation/Requirement</u>
Particulate Matter	s. NR 415.06(1)(a), Wis. Adm. Code	0.60 pound per million BTU heat input
Visible Emissions	s. NR 431.04(1), Wis. Adm. Code	Number 2 of the Ringleman chart or 40% opacity

### **Specific Conditions Which Are Applicable to the Above Category:**

#### **1) Fuel Requirements**

The heating system shall be fired on only group 1 virgin fossil fuels, as defined in s. NR 445.02(11), Wis. Adm. Code. Group 1 virgin fossil fuels consist of natural gas, liquid petroleum gas, distillate fuel oil, gasoline and diesel fuel. The sulfur content of the fuel may not exceed 0.5% by weight. (s. 144.394(3), Wis. Stats.)



2) Compliance Demonstration by Recordkeeping:

The permittee shall keep monthly records which detail the amount and type of fuel used by this heating system. These records shall be adequately detailed so that compliance with all applicable requirements can be determined and so that the requirements of s. NR 439.04, Wis. Adm. Code are met. (NR 407.09(1)(c), Wis. Adm. Code.)

3) Methods and Procedures for Determining Compliance with Emission Limitations (by air contaminant).

When tests or a continuous monitoring system are required by the department, the owner or operator of a source shall use the reference methods listed in this section and in ss. NR 439.07 to 439.095 to determine compliance with emission limitations, unless an alternative or equivalent method is approved, or a specific method is required, in writing, by the department. Any alternative, equivalent or other specific method approved or required by the department for an ozone precursor shall be submitted to, and will not become effective for federal purposes until approved by, the administrator of the U.S. environmental protection agency or designee as a source-specific revision to the department's state implementation plan for ozone. The test methods shall include quality control and quality assurance procedures and the data reporting format which are specified and approved by the department for collection, analysis, processing and reporting of compliance monitoring data. Notwithstanding the compliance determination methods which the owner or operator of a source is authorized to use under this chapter, the department may use any relevant information or appropriate method to determine a source's compliance with applicable emission limitations.

**NONFUGITIVE PARTICULATE EMISSIONS.** The owner or operator of a source shall use Method 5, 5A, 5B, 5D, 5E, 5F, 5G, 5H or 17 in 40 CFR part 60, Appendix A, incorporated by reference in s. NR 484.04, or Method 202 in 40 CFR part 51, Appendix M, incorporated by reference in s. NR 484.04, to determine compliance with a nonfugitive particulate emission limitation.

**NONFUGITIVE PM<sub>10</sub> PARTICULATE EMISSIONS.** The owner or operator of a source shall use Method 201 or 201A in 40 CFR part 51, Appendix M, incorporated by reference in s. NR 484.04, to determine compliance with a nonfugitive PM<sub>10</sub> particulate emission limitation.

**VISIBLE EMISSIONS.**

(a) The owner or operator of a source shall use one of the following methods to determine compliance with a visible emission limitation:

1. Method 9 in 40 CFR part 60, Appendix A, incorporated by reference in s. NR 484.04.
2. Install, calibrate, maintain and operate a continuous emission monitor that meets the applicable performance specifications in 40 CFR part 60, Appendix B or 40 CFR part 75, Appendices A through I, incorporated by reference in s. NR 484.04, and follow a quality control and quality assurance plan for the monitor which has been approved by the department.

(b) The owner or operator of a source shall use Method 22 in 40 CFR part 60, Appendix A, incorporated by reference in s. NR 484.04, to determine compliance with a no visible emission requirement.

(s. NR 439.06, Wis. Adm. Code)



#### 4) Reports

##### a) Monitoring Reports

Unless otherwise stated in an air pollution control permit issued under ch. NR 407, Wis. Adm. Code which incorporates this general operation permit,

(1) The permittee shall submit the results of monitoring or a summary of monitoring results required by this permit to the Department every 6 months.

A map depicting the district boundaries and as well the address and telephone number of the District Headquarters is attached to this permit.

(2) The time periods to be addressed by the submittal are January 1 to June 30 and July 1 to December 31.

(3) The report shall be submitted to the local Wisconsin Department of Natural Resources District Headquarters within 30 days after the end of each reporting period.

(4) All deviations from and violations of applicable requirements shall be clearly identified in the submittal.

(5) Each submittal shall be certified by a responsible official as to the truth, accuracy and completeness of the report.

(s. NR 439.03(1)(b), Wis. Adm. Code)

##### b) Compliance Certification

Unless otherwise stated in an air pollution control permit issued under ch. NR 407, Wis. Adm. Code which incorporates this general operation permit,

(1) The permittee shall submit an annual certification of compliance with the requirements of this permit to the local Wisconsin Department of Natural Resources District Headquarters and to Compliance Data - Wisconsin Air and Radiation Division, U.S. EPA, 77 W. Jackson, Chicago, IL 60604. A map depicting the District boundaries as well as the address and telephone number of the District Headquarters is attached to this permit.

(2) The time period to be addressed by the report is the January 1 to December 31 period which precedes the report.



## **Appendix G**

### **Proposed Rules for General/Registration Permits**

#### ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD REPEALING, AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 407.02(3); to **amend** NR 406.04(1)(ce), (cm) and (m)(intro.), 407.03(1)(ce) and (cm) and 407.10(2)(intro.), (4), (5), (6)(a)1., 2. and (b), (7)(b) and (9); and to **create** NR 400.02(73m) and (131m), 406.16, 406.17, 407.10(1m), 407.105, and 410.03(1)(a)6. and 7. relating to implementing general and registration air permit programs as required by 2003 Wisconsin Act 118.

AM-46-04

#### Analysis Prepared by the Department of Natural Resources

**Statutory Authority:** ss. 227.11(2)(a), 285.11(1) and (6), 285.60(2g), (3) and (6) and 285.69(1), Stats.

**Statutes Interpreted:** ss. 285.11(6), 285.60(2g) and (3), 285.61 and 285.62, Stats. The State Implementation Plan developed under that provision is revised.

#### **Explanation of Agency Authority**

Section 227.11(2)(a), Stats., gives agencies general rulemaking authority. Section 285.11(1), Stats., gives the Department authority to promulgate rules consistent with ch. 285, Stats. Section 285.11(6), Stats., gives the Department the authority to develop a state implementation plan for the control of air pollution. The Department has authority under s. 285.60(2g), Stats. to promulgate rules to establish registration permits. The Department has authority under s. 285.60(3), Stats. to promulgate rules to establish general permits. The Department has the authority under s. 285.60(6), Stats., to exempt certain air pollution sources from the requirement to obtain a permit. Section 285.69(1), Stats., gives the Department the authority to charge fees for issuance of construction permits.

#### **Related Statute or Rule**

These rules relate directly to regulations for the permitting of activities that result in air emissions. These rules are in chapters NR 406 and 407, Wis. Adm. Code.

#### **Plain Language Rule Analysis**

The proposed rule revisions establish criteria and procedures for the issuance of general and registration air permits. These rules are intended to provide industry and the Department with



a streamlined approach to permitting low emitting sources or categories of similar sources. Sources that are eligible for and which choose to take advantage of a general or registration permit would complete a simplified permit application form. General and registration permits would already have been completed by the Department for the targeted sources or source categories using permit language that is standard for the sources to be covered by the permit. This process will provide greater certainty, flexibility and timeliness to the permitting process.

The rule establishes the general framework for these permits by setting implementation criteria. Specific permit criteria will be developed during permit preparation. Types of sources that could be regulated by registration or general permits include those that have actual emissions significantly lower than federal major source thresholds, nonmetallic mineral processing plants, asphalt plants, small natural gas fired generators, digestors, small heating units, printing presses and hospital sterilization equipment.

Also included in this package is a minor change to clarify the permit exemption criteria for grain processing and grain storage facilities. This clarification is necessary to ensure that column dryers and rack dryers are included in the exemption criteria, as was intended in the original rule development. Included in this package as well is a minor technical change to provide correct references to the recently updated chapter NR 445, which was inadvertently omitted in the processing of that rule package.

### **Federal Regulatory Analysis**

Although the federal operation permit program provides the option for states to prepare general operation permit programs, there is no federal program that requires general or registration permits for construction of new or modified sources. The Department will not be able to issue general or registration permits to new or modified major sources as federal and state laws require individual permits for those sources.

### **State Regulatory Analysis**

Minnesota and Michigan operate registration and general permit programs. The Department is considering regulating similar source categories as have been regulated in Minnesota and Michigan under general and registration permits.

### **Summary of Factual Data**

Statutory changes under 2003 Wisconsin Act 118 require the Department to develop regulations for the implementation of general permit and registration permit programs. The proposed regulations will provide for flexibility identified during the Department's air permit streamlining efforts. By specifying which types of sources will not be eligible for general or registration permits (such as those that will significantly impact areas that are not meeting air quality standards) and by not defining the types of sources that will be eligible for these types of permits, environmental protection backstops are established without barriers on flexibility in implementation.



### **Effect on Small Business**

Small business will benefit by the streamlining procedures provided within these proposed rule revisions. The proposed rule revisions should lead to greater flexibility and reduced administrative cost for small businesses.

### **Anticipated Costs Incurred by the Private Sector**

The proposed rule revisions will require Department resources to implement. The Department is proposing changes to its construction permit fee schedule contained within chapter NR 410 to fund the registration and general construction permit program. Annual emission fees will fund the registration and general operation permit program. Proposed permit fees are based upon the existing fee structure for Department review activities of a similar nature.

### **Agency Contact Person**

Jeffrey Hanson: (608) 266-6876 [jeffrey.hanson@dnr.state.wi.us](mailto:jeffrey.hanson@dnr.state.wi.us)

### **Place where comments are to be submitted and deadline for submission**

Written comment may be submitted at the public hearings or by regular mail, fax or email to:

Jeffrey Hanson  
Department of Natural Resources  
Bureau of Air Management  
P.O. Box 7921  
Madison, WI 53707-7921  
Fax: (608) 267-0560  
[jeffrey.hanson@dnr.state.wi.us](mailto:jeffrey.hanson@dnr.state.wi.us)

Written comments may also be submitted to the Department using the Wisconsin Administrative Rules

Internet Web site at <http://adminrules.wisconsin.gov>.

Hearing dates and submission deadline are to be determined.

SECTION 1. NR 400.02(73m) and (131m) are created to read:

NR 400.02(73m) "General permit" means a permit that may be made applicable to numerous similar stationary sources and which is issued in accordance with s. 285.60(3), Stats.

(131m) "Registration permit" " means a permit for stationary sources with low actual or potential emissions and issued in accordance with s. 285.60(2g), Stats.



SECTION 2. NR 406.04(1)(ce), (cm) and (m)(intro.) are amended to read:

NR 406.04(1)(ce) Grain storage facilities, including facilities with column dryers or rack dryers equipped with 50 mesh or less screens, with an average tonnage of grain received of less than 5500 tons per month and which are not subject to s. NR 440.47. The average monthly tonnage of grain received shall be calculated by dividing the cumulative tonnage of grain received since January 1 of each year by 12. The average monthly tonnage of grain received does not include product that the facility sells, acting as a broker, which is never actually received or dried at the grain storage facility.

(cm) Grain processing facilities, including facilities with column dryers or rack dryers equipped with 50 mesh or less screens, with an average tonnage of grain received of less than 4500 tons per month and which are not subject to s. NR 440.47. The average monthly tonnage of grain received shall be calculated by dividing the cumulative tonnage of grain received since January 1 of each year by 12. The average monthly tonnage of grain received does not include product that the facility receives that is packaged when received and remains packaged.

(m)(intro.) The following procedures for the remediation or disposal of soil or water contaminated with organic compounds, provided the potential to emit, considering emission control devices, for any hazardous air contaminant listed in Table 4 A to Table 5 C of ~~s. NR 445.04~~ s. NR 445.07 is not greater than the emission rate listed in Table 4 A to Table 5 C of ~~s. NR 445.04~~ s. NR 445.07 for the air contaminant at the respective stack height, and the procedure is not subject to any standard or regulation under section 111 or 112 of the ~~act~~ Act (42 USC 7411 or 7412):

SECTION 3. NR 406.16 and 406.17 are created to read:

**NR 406.16 General permits.** (1) The department may issue general permits for the construction, modification, reconstruction or replacement of stationary sources in accordance with s. 285.60 (3), Stats.

(2) An owner or operator of a stationary source who applies for a general permit shall submit an application using department approved general permit application forms.



**Note:** Copies of department approved general permit application forms may be obtained from the regional and area offices of the department or from the Wisconsin Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707-7921, Attention: construction permits.

(3) Categories of stationary sources which may be covered by a general permit are those categories which the department determines are more appropriately regulated under a general permit than under individual construction permits and in which the individual sources do all of the following:

- (a) Perform the same or substantially similar operations.
- (b) Produce the same types of air contaminants.
- (c) Employ the same or substantially similar capture and control systems, if applicable.
- (d) Are subject to the same emission limitations and other state and federal standards that may be applicable to the sources in the category.

(4) The department shall issue general permits for source categories using the applicable procedures and criteria in ss. 285.61, 285.63, 285.65 and 285.66, Stats. The procedural requirements in s. 285.61(2) to (8), Stats., do not apply to the determination of whether a source is covered by a general permit. The department may then determine that the construction, modification, reconstruction or replacement of a source will be covered by the general permit if the source applies for coverage and demonstrates that the source qualifies for coverage under that general permit. A general permit shall require any stationary source covered by it to comply with ss. 285.61 to 285.69, Stats. Inclusion of a source under a general permit is not an appealable decision under s. 227.42, 227.52, 227.53 or 285.81, Stats.

(5) General permits shall contain applicability criteria, emission limits, monitoring and recordkeeping requirements, reporting requirements and general conditions.

(6) Notwithstanding the existence of a general permit for a stationary source category to which an individual source belongs, no individual source may be covered by a general permit if any of the following apply:

- (a) Both of the following apply:



1. The stationary source is located in or has a significant impact on an area which has been designated nonattainment for particulate matter, PM10, sulfur dioxide, nitrogen oxides, carbon monoxide or lead.

2. The stationary source has maximum theoretical emissions of the air contaminant for which the area in which it is located or on which it has a significant impact has been designated nonattainment of more than 9.0 pounds per hour of sulfur dioxide or carbon monoxide for sulfur dioxide or carbon monoxide nonattainment areas respectively; 5.7 pounds per hour of particulate matter or nitrogen dioxide for particulate matter or nitrogen dioxide nonattainment areas respectively; 3.4 pounds per hour of PM10 for PM10 nonattainment areas; or 0.13 pounds per hour of lead for lead nonattainment areas.

(b) The stationary source owner or operator is applying for a permit to construct, modify, reconstruct or replace an emissions unit to which a general permit applies, and the emissions unit would be a major source or a major modification to a major source under ch. NR 405 or 408.

(c) The stationary source includes any emissions unit which is not eligible for coverage under a general permit.

(d) The stationary source causes or exacerbates, or may cause or exacerbate a violation of any ambient air quality standard or ambient air increment.

(e) The department determines that the stationary source is more appropriately regulated by an individual construction permit.

(7)(a) The department shall withdraw a stationary source from coverage under a general permit and issue an individual construction permit upon written request of the permittee. The permittee shall submit a complete application for a construction permit under s. NR 406.03 at the time the request is made. The application shall be processed pursuant to this chapter and s. 285.61, Stats.

(b) When an individual construction permit is issued for a source covered by a general permit, the applicability of the general permit to the source is terminated on the effective date of the individual construction permit.



(8) An owner or operator of a stationary source who holds an individual construction permit for a source which is eligible for coverage by a general permit may request that the department revoke the individual construction permit pursuant to s. NR 406.11(1)(d) and allow the source to be covered by the general permit. The department may grant the request if it determines that the requirements of this section are met.

(9) A source which the department has determined may be covered by a general permit may be prosecuted for construction without an individual construction permit if the source is later determined not to qualify for the conditions and terms of the general permit.

(10) Within 15 days after the receipt of an application for coverage under a general permit, the department shall provide one of the following to an applicant for a general permit:

(a) Written notice of the department's determination that the source qualifies for coverage under the general permit.

(b) A written description of any information that is missing from the application for coverage under the general permit.

(c) Written notice of the department's determination that the source does not qualify for coverage under the general permit, specifically describing the reasons for that determination.

**NR 406.17 Registration permits.** (1) The department may issue registration permits for the construction, modification, reconstruction or replacement of stationary sources in accordance with s. 285.60(2g), Stats.

(2) An owner or operator of a stationary source who applies for a registration permit shall submit an application using department approved registration permit application forms.

**Note:** Copies of the department approved registration permit application forms may be obtained from the regional and area offices of the department or from the Wisconsin Department of Natural Resources, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707-7921, Attention: construction permits.

(3) Categories of stationary sources which meet all of the following criteria may be covered by a



registration permit:

(a) Categories of sources which the department determines are more appropriately regulated under a registration permit than under an individual construction permit.

(b) Categories of sources which have low levels of potential or actual emissions.

(c) Categories of sources which have actual annual emissions of carbon monoxide, sulfur dioxide, nitrogen oxides, particulate matter, PM10, VOC and lead under 25% of any major source emission threshold in ch. NR 405, 406, 407 or 408.

(d) Categories of sources which have actual emissions of any hazardous air below any federal applicability threshold and below any value in Tables 1-5 in ch. NR 445.

(4) The department shall issue registration permits for the construction, modification, reconstruction or replacement of stationary sources using the procedures and criteria in ss. 285.60(2g), 285.61 and 285.63, Stats. The procedural requirements of s. 285.61(2) to (8), Stats., do not apply to issuance of a registration permit. The department may then determine that the construction, modification, reconstruction or replacement of a source will be covered by the registration permit if the owner or operator applies for coverage and demonstrates that the source qualifies for coverage under that registration permit. A registration permit shall require any stationary source covered by it to comply with ss. 285.61 to 285.69, Stats.

(5) Registration permits shall contain applicability criteria, compliance demonstration methods, monitoring and recordkeeping requirements, reporting requirements and general conditions.

(6) Notwithstanding the existence of a registration permit for a stationary source category to which an individual source belongs, no individual source may be covered by a registration permit if any of the following apply:

(a) Both of the following apply:

1. The stationary source is located in or has a significant impact on an area which has been designated nonattainment for particulate matter, PM10, sulfur dioxide, nitrogen oxides, carbon monoxide or lead.



2. The stationary source has maximum theoretical emissions of the air contaminant for which the area in which it is located or on which it has a significant impact has been designated nonattainment of more than 9.0 pounds per hour of sulfur dioxide or carbon monoxide for sulfur dioxide or carbon monoxide nonattainment areas respectively; 5.7 pounds per hour of particulate matter or nitrogen dioxide for particulate matter or nitrogen dioxide nonattainment areas respectively; 3.4 pounds per hour of PM10 for PM10 nonattainment areas; or 0.13 pounds per hour of lead for lead nonattainment areas.

(b) The stationary source owner or operator is applying for a permit to construct, modify, reconstruct or replace an emissions unit to which a registration permit applies, and the emissions unit would be a major source or major modification to a major source under ch. NR 405 or 408.

(c) The stationary source for which the owner or operator is applying for coverage under a registration permit includes any emission unit which is not eligible for coverage under a registration permit.

(d) The stationary source causes or exacerbates, or may cause or exacerbate a violation of any ambient air quality standard or ambient air increment.

(e) The department determines that the stationary source is more appropriately regulated by an individual construction permit.

(7)(a) The department shall withdraw a stationary source from coverage under a registration permit and issue an individual construction permit upon written request of the permittee. The permittee shall submit a complete application for a construction permit under s. NR 406.03 at the time the request is made. The application shall be processed pursuant to s. NR 406.08 and s. 285.61, Stats.

(b) When an individual construction permit is issued for a source covered by a registration permit, the applicability of the registration permit to the source is terminated on the effective date of the individual construction permit.

(8) An owner or operator of a stationary source who holds an individual construction permit for a source which is eligible for coverage by a registration permit may request that the department



revoke the individual construction permit pursuant to s. NR 406.11(1)(d) and allow the source to be covered by the registration permit. The department may grant the request if it determines that the requirements of this section are met.

(9) A source which the department has determined may be covered by a registration permit may be prosecuted for construction without a construction permit if the source is later determined not to qualify for the conditions and terms of the registration permit.

(10) Within 15 days after the receipt of the application form prescribed by the department, the department shall provide one of the following to an applicant for a registration permit:

(a) Written notice of the department's determination that the source qualifies for a registration permit.

(b) A written description of any information that is missing from the application for a registration permit.

(c) Written notice of the department's determination that the source does not qualify for a registration permit, specifically describing the reasons for that determination.

SECTION 4. NR 407.02(3) is repealed.

SECTION 5. NR 407.03(1)(ce) and (cm) are amended to read:

NR 407.03(1)(ce) Grain storage facilities, including facilities with column dryers or rack dryers equipped with 50 mesh or less screens, with an average tonnage of grain received of less than 5500 tons per month, which are not subject to s. NR 440.47, and which are not part 70 sources. The average monthly tonnage of grain received shall be calculated by dividing the cumulative tonnage of grain received since January 1 of each year by 12. The average monthly tonnage of grain received does not include product that the facility sells, acting as a broker, which is never actually received or dried at the grain storage facility.

(cm) Grain processing facilities, including facilities with column dryers or rack dryers equipped with 50 mesh or less screens, with an average tonnage of grain received of less than 4500 tons per month, which are not subject to s. NR 440.47, and which are not part 70 sources. The average monthly tonnage of grain received shall be calculated by dividing the cumulative tonnage of grain received since January 1 of each year by 12. The average monthly tonnage of grain received does not include product that the facility receives that is packaged when received and remains packaged.

SECTION 6. NR 407.10 (1m) is created to read:

**NR 407.10 General permits.** (1m) An owner or operator of a stationary source who applies for a general permit shall submit an application using department approved general operation permit application forms.

**Note:** Copies of department approved general permit application forms may be obtained from the regional and area offices of the department or from the Wisconsin Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707-7921, Attention: operation permits.

SECTION 7. NR 407.10(2)(intro.) is amended to read:

NR 407.10(2)(intro.) Categories of stationary sources which may be covered by a general operation permit are those categories which the department determines are more appropriately regulated under a general operation permit than under individual operation permits and in which the individual sources do all of the following:

SECTION 8. NR 407.10(4), (5), (6)(a)1. and 2. and (b) are amended to read:

NR 407.10(4) The department shall specify the term of a general operation permit in the permit. The term of a general operation permit issued to a Part 70 source may not exceed 5 years from the date of issuance or renewal.

(5) General operation permits shall contain applicability criteria, emission limits, monitoring and recordkeeping requirements, reporting requirements, and general conditions ~~and applicability criteria~~.

(6)(a) 1. The stationary source is located in or has a significant impact on an area which has been designated nonattainment for ~~particulates~~ particulate matter, PM10, sulfur dioxide, nitrogen oxides, carbon monoxide or lead.

2. The stationary source has maximum theoretical emissions of the air contaminant for which the area in which it is located or on which it has a significant impact has been designated nonattainment of more than 9.0 pounds per hour of sulfur dioxide or carbon monoxide for sulfur dioxide or carbon monoxide nonattainment areas respectively; 5.7 pounds per hour of particulate matter or nitrogen dioxide for particulate matter or nitrogen dioxide nonattainment areas respectively; 3.4 pounds per hour of PM10 for PM10 nonattainment areas; or 0.13 pounds per hour of lead for lead nonattainment areas.

(b) The stationary source owner or operator is applying for a permit to operate an emissions unit to which a general operation permit applies, and the emissions unit would be a major source or a major modification to a major source under ch. NR 405 or 408.

SECTION 9. NR 407.10(7)(b) is amended to read:

NR 407.10(7)(b) When an individual operation permit is issued for a source ~~which would otherwise be~~ covered by a general operation permit, the applicability of the general operation permit to the source is terminated on the effective date of the individual operation permit.

SECTION 10. NR 407.10(9) is amended to read:



NR 407.10(9) Notwithstanding the permit shield provision in section 504(f) of the ~~act~~ Act (42 USC 7661c(f)), a source which the department has determined may be covered by a general permit may be prosecuted for operation without an operation permit if the source is later determined not to qualify for the conditions and terms of the general permit.

SECTION 11. NR 407.10(10) is created to read:

NR 407.10(10) Within 15 days after the receipt of an application for coverage under a general permit, the department shall provide one of the following to an applicant for a general permit:

(a) Written notice of the department's determination that the source qualifies for coverage under the general permit.

(b) A written description of any information that is missing from the application for coverage under the general permit.

(c) Written notice of the department's determination that the source does not qualify for coverage under the general permit, specifically describing the reasons for that determination.

SECTION 12. NR 407.105 is created to read:

**NR 407.105 Registration permits.** (1) The department may issue registration permits for the operation of stationary sources in accordance with s. 285.60(2g), Stats.

(2) An owner or operator of a stationary source who applies for a registration permit shall submit an application using department approved registration permit application forms.

**Note:** Copies of the department approved registration permit application forms may be obtained from the regional and area offices of the department or from the Wisconsin Department of Natural Resources, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707-7921, Attention: operation permits.

**(3)** Categories of stationary sources which meet all of the following criteria-may be covered by a registration permit:

(a) Categories of sources which the department determines are more appropriately regulated under a registration permit than under an individual construction permit.



(b) Categories of sources which have low levels of potential or actual emissions.

(b) Categories of sources which have actual annual emissions of carbon monoxide, sulfur dioxide, nitrogen oxides, particulate matter, PM10, VOC and lead under 25% of any major source threshold in chs. NR 405, 406, 407 or 408.

(d) Categories of sources which have actual emissions of any hazardous air pollutant-below any federal applicability threshold and below any value in Tables 1-5 in ch. NR 445.

(4) The department shall issue registration permits for the operation of stationary sources using the procedures and criteria in ss. 285.60(2g)(b), 285.63, 285.65 and 285.69, Stats. The department may then determine that the operation of a source will be covered by the registration permit if the source owner or operator applies for coverage and demonstrates that the source qualifies for coverage under that registration permit. A registration permit shall require any stationary source covered by it to comply with ss. 285.61 to 285.69, Stats. Inclusion of a source under a registration permit is not an appealable decision under s. 227.42, 227.52, 227.53 or 285.81, Stats.

(5) Registration permits shall contain applicability criteria, compliance demonstration methods, monitoring and recordkeeping requirements, reporting requirements and general conditions.

(6) Notwithstanding the existence of a registration permit for a stationary source category to which an individual source belongs, no individual source may be covered by a registration permit if any of the following apply:

(a) Both of the following apply:

1. The stationary source is located in or has a significant impact on an area which has been designated nonattainment for particulate matter, PM10, sulfur dioxide, nitrogen oxides, carbon monoxide or lead.

2. The stationary source has maximum theoretical emissions of the air contaminant for which the area in which it is located or on which it has a significant impact has been designated as nonattainment of more than 9.0 pounds per hour for sulfur dioxide or carbon monoxide nonattainment



areas; 5.7 pounds per hour for particulate matter or nitrogen dioxide nonattainment areas; 3.4 pounds per hour for PM10 nonattainment areas; or 0.13 pounds per hour for lead nonattainment areas.

(b) The stationary source owner or operator is applying for a permit to operate a facility to which a registration permit applies, and the facility is a major source under ch. NR 405 or 408.

(c) The stationary source includes any emission unit which is not eligible for coverage under a registration permit.

(d) The stationary source causes or exacerbates, or may cause or exacerbate a violation of any ambient air quality standard or ambient air increment.

(e) The department determines that the stationary source is more appropriately regulated by an individual operation permit.

(7) (a) The department shall withdraw a stationary source from coverage under a registration permit and issue an individual operation permit upon written request of the permittee. The permittee shall submit a complete application for an operation permit under s. NR 407.05 at the time the request is made. The application shall be processed pursuant to ss. NR 407.06 and 407.07 and s. 285.62, Stats.

(b) When an individual operation permit is issued for a source covered by a registration permit, the applicability of the registration permit to the source is terminated on the effective date of the individual operation permit.

(8) An owner or operator of a stationary source who holds an individual operation permit for a source which is eligible for coverage by a registration operation permit may request that the department revoke the individual operation permit pursuant to sub. (4) and allow the source to be covered by the registration permit. The department may grant the request if it determines that the requirements of this section are met.

(9) A source which the department has determined may be covered by a registration permit may be prosecuted for operation without an operation permit if the source is later determined not to qualify for the conditions and terms of the registration permit.



(10) Within 15 days after the receipt of the form prescribed by the department, the department shall provide one of the following to an applicant for a registration permit:

(a) Written notice of the department's determination that the source qualifies for a registration permit.

(b) A written description of any information that is missing from the application for a registration permit.

(c) Written notice of the department's determination that the source does not qualify for a registration permit, specifically describing the reasons for that determination.

SECTION 13. NR 410.03(1)(a)6. and 7. are created to read:

NR 410.03(1)(a)6. \$2,300 for a general permit issued under s. NR 406.16.

7. \$1,100 for a registration permit issued under s. NR 406.17.

SECTION 14. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

**SECTION 15. BOARD ADOPTION.** This rule was approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

**Dated at Madison, Wisconsin** \_\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Scott Hassett, Secretary

(SEAL)

## Appendix H

### August 5, 2004 Letter from EPA to DNR Regarding WI Act 118



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

AUG 5 2004

A-18J

Lloyd Eagan, Director  
Bureau of Air Management  
Wisconsin Department of Natural Resources  
101 South Webster Street  
P.O. Box 7921  
Madison, Wisconsin 53707

Dear Ms. Eagan *Lloyd*

The United States Environmental Protection Agency (USEPA) has reviewed Wisconsin Act 118, published February 5, 2004, and effective February 6, 2004. This Act affects provisions of Wisconsin's Statutes, including Chapter 265, Air Pollution. Act 118 makes various changes relating to the administrative procedures for how the Wisconsin Department of Natural Resources (WDNR) will process air pollution control permits. These changes include new processing time frames and new permits types such as registration and general permits, among other changes.

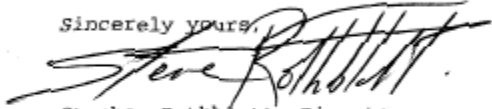
It's our understanding that Wisconsin will adopt regulations or changes to existing regulations to implement some provisions of Act 118, and will immediately begin to directly implement other provisions of this Act. Therefore, USEPA is notifying WDNR of our concerns with certain provisions of Act 118. We expect Wisconsin to promulgate regulations that are consistent with the Clean Air Act where possible, or otherwise either amend Act 118 to remove the objectionable provisions, or provide us with an Attorney General opinion that these provisions do not in any way prevent WDNR from fully implementing and enforcing its Title V program. Unilateral State implementation of certain provisions could result in deficiencies in Wisconsin's Title V program as well as impact Wisconsin's authority to fully implement its approved Title V and New Source Review programs.

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Thank you very much for your attention to these concerns. If you have any questions regarding these issues please do not hesitate to contact me.

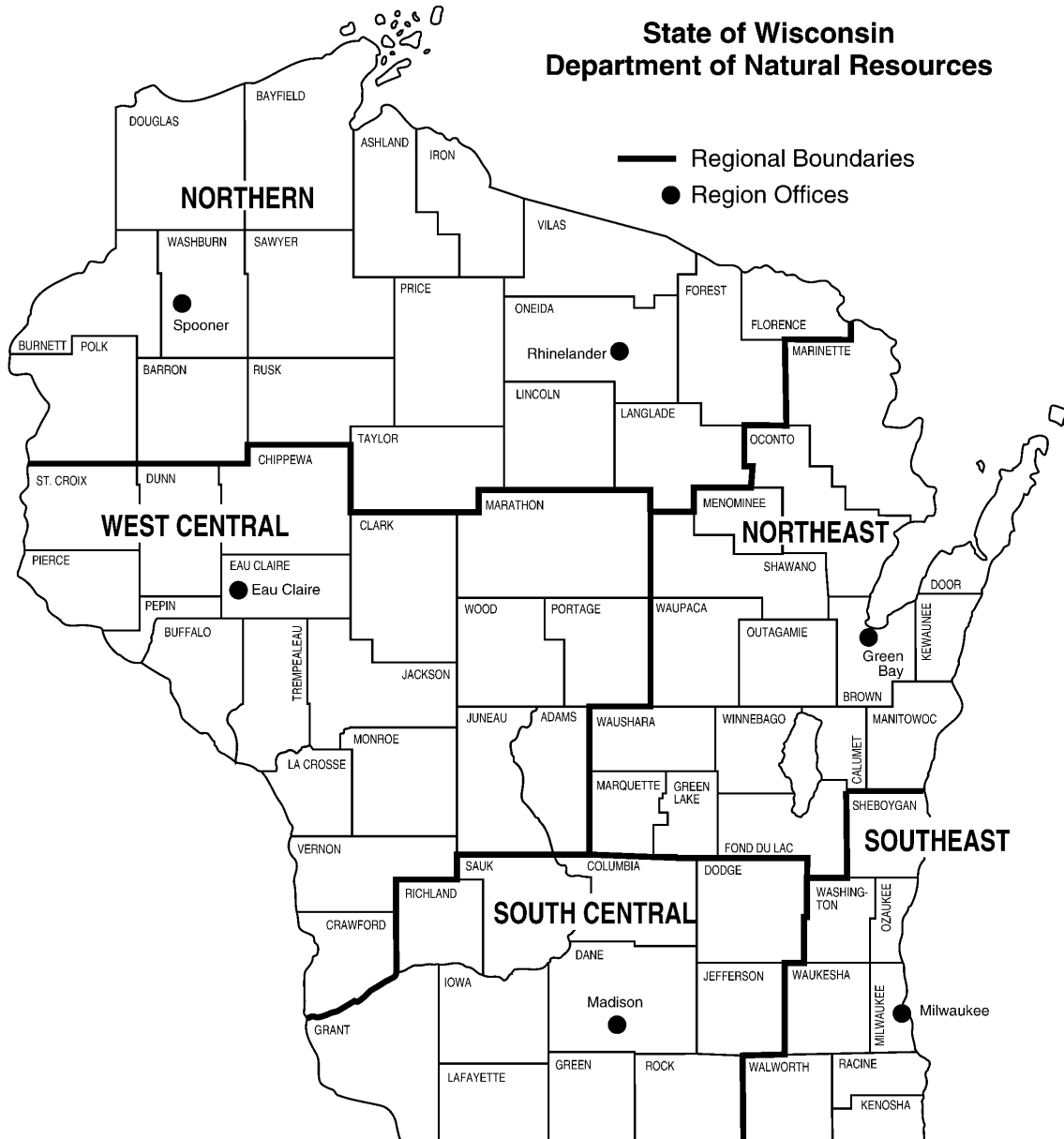
Sincerely yours,

A handwritten signature in black ink, appearing to read "Steve Rothblatt", written over the typed name.

Stephen Rothblatt, Director  
Air and Radiation Division

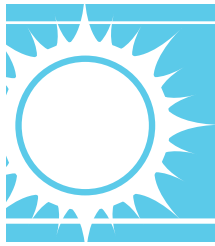
Enclosure

**State of Wisconsin  
Department of Natural Resources**



REV 7-02





# Air Permit Glossary

## Attainment area

An attainment area is a geographic area in which monitored levels of a criteria air pollutant meet a health-based primary standard (national ambient air quality standard, or NAAQS). An area may have an acceptable level for one criteria air pollutant, but may have unacceptable levels for others.

## BACT

Best Available Control Technology is required on new or modified major pollution sources in areas that meet federal air quality standards (attainment areas).

## Construction permit fees

Fees for construction permit processing generally include but are not limited to:

- \$1,350 application fee
- \$2,300 minor source review base fee **OR** \$4,400 to \$12,000 major source review base fee
- \$400 for each emission source when two or more are reviewed
- \$700 fee for an air quality analysis
- \$2,650-\$4,000 fee for expedited (faster) review. Expedited review is optional, and the charge must only be paid if the DNR meets the expedited deadline.

## Criteria air pollutants

Criteria air pollutants are a group of very common air pollutants regulated by the U.S. Environmental Protection Agency on the basis of certain criteria (information on health and/or environmental effects of air pollution). Criteria air pollutants include carbon monoxide, nitrogen oxides, lead, ozone, sulfur dioxide, total suspended particles and particulate matter (inhalable particles).

## Exempted sources

Some smaller pollution sources may be exempt from permitting requirements, depending on the area and industry. The DNR *Permit Primer* website helps individual businesses determine what permits they need. Check the end of this glossary for the Permit Primer web address.

## Hazardous air pollutants

Hazardous air pollutants are known or suspected to cause serious health effects such as cancer or birth defects, or significant environmental harm. The U.S. EPA has listed *188 hazardous air pollutants*. Examples include benzene (found in gasoline), perchlorethylene, (used in some dry cleaning facilities) and methylene chloride.

## LAER

Lowest Achievable Emission Rate is required on new or modified major pollution sources in areas that do not meet federal air quality standards (non-attainment areas).

## Major vs. minor sources

A pollution source is designated as minor or major according to the industry, the pollutant(s) being emitted, the type of permit involved (construction or operation) and the air quality of the area where the source is located. In general, a source is major if its emissions exceed certain levels (i.e., thresholds) that are defined in terms of tons per year.

### Regarding construction permits...

If the source is located in an area that has attained minimum federal air quality standards (an attainment area), the source is considered major when it has the potential to emit:

- 1) more than 250 tons per year of a regulated air pollutant, or
- 2) more than 100 tons per year of a regulated air pollutant

IF the source is classified as a:

fossil-fuel-fired steam electric plant or boiler exceeding 250 million BTUs/hour heat input, coal cleaning plant (with thermal dryer), kraft pulp mill, portland cement plant, primary zinc smelter, iron or steel mill plant, primary aluminum ore reduction plant, primary copper smelter, municipal incinerator capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, or nitric acid plant, petroleum refinery, lime plant, phosphate rock processing plant, coke oven battery, sulfur recovery plant, carbon black plant (furnace process), primary lead smelter, fuel conversion plant, sintering plant, secondary metal production plant, chemical process plant, petroleum storage or transfer unit with a storage capacity exceeding 300,000 barrels, taconite ore processing plant, glass fiber processing plant, or charcoal production plant.

### Regarding construction permits...

If the source is located in an area that has NOT attained minimum federal air quality standards (a non-attainment area), the source is considered major if it emits 100 tons per year or more of any regulated air contaminant except ozone precursors. Ozone non-attainment areas may have lower thresholds for volatile organic compounds and nitrogen oxides, depending on the severity of the pollution.

## Regarding operation permits...

Any source that has the potential to emit 100 tons per year or more of any criteria air pollutant is a major source and must obtain a Title V operation permit. Sources in non-attainment areas are considered major if they emit more than 25 tons of volatile organic compounds per year.

Major/minor distinctions are different for hazardous air pollutants. Sources are considered major if they have the potential to emit 10 tons per year of any one of the federally listed hazardous air pollutants or 25 tons per year of any combination of federally listed hazardous air pollutants.

## New Source Review

New Source Review (NSR) is a pre-construction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under the Clean Air Act. NSR is required by Parts C ("Prevention of Significant Deterioration of Air Quality") and D ("Plan Requirements for Non-attainment Areas") of Title I of the Clean Air Act.

The NSR program has two parts. **The Prevention of Significant Deterioration (PSD) program** is for geographic areas that meet the National Ambient Air Quality Standards. PSD requirements are designed to ensure that the air quality in attainment areas will not degrade. **The Non-Attainment Area (NAA) program** is for areas that do not meet National Ambient Air Quality Standards.

Modifications to major sources or modifications to minor sources (where the modification itself exceeds the major source threshold) are subject to NSR program requirements if the modification results in a significant net increase in emissions of a regulated pollutant.

## Non-attainment area

A non-attainment area is a geographic area in which the monitored level of a criteria air pollutant is higher than the level allowed by federal standards. A single geographic area may have acceptable levels of one criteria air pollutant but unacceptable levels of other criteria air pollutants. An estimated 60% of Americans live in non-attainment areas.

In Wisconsin, Kenosha, Milwaukee, Ozaukee, Racine, Washington and Waukesha counties do not meet federal air quality standards **for ozone** (based on the "1-hour ozone standard") and are currently classified as severe ozone non-attainment areas. Pollution sources in non-attainment areas will have more restrictive permit requirements compared to similar sources in other areas. Kewaunee and Manitowoc counties have recently attained federal standards, but businesses in these counties must still comply with additional requirements.

## Ozone

Ozone is a molecule consisting of three oxygen atoms bonded together. Stratospheric ozone shields the Earth from the sun's harmful rays, particularly ultraviolet B. Ground-level ozone is mainly produced by burning coal, gasoline and other fuels. Ground-level ozone is the main component of smog.

## RACT

Reasonably Available Control Technology is required on existing pollution sources in areas that do not meet federal air quality standards (non-attainment areas).

## State Implementation Plan (SIP)

A State Implementation Plan is a detailed description of the programs a state will use to carry out its responsibilities under the Clean Air Act.

## Threshold

Thresholds are the emission levels that divide exempt and non-exempt sources, major and minor sources, etc.

## Title V

Title V (Five) of the 1990 Clean Air Act Amendments requires all major sources and some minor sources of air pollution to obtain an operating permit. Title V operating permits may apply to minor sources if the source emits federally regulated hazardous air pollutants or is subject to some other federal air pollution standard.

## TPY

TPY is an acronym for tons per year.

## Volatile organic compounds (VOCs)

Volatile organic compounds contain carbon and evaporate readily. These chemicals include industrial chemicals such as benzene, and solvents such as toluene and tetrachloroethylene (also known as perchloroethylene, a common dry cleaning solvent). Many volatile organic compounds are also hazardous air pollutants.

## Internet Resources

For more detailed information on air permitting in Wisconsin, check the following Department of Natural Resources (DNR) webpages:

### The DNR Permit Primer

<http://dnr.wi.gov/permitprimer/>

### The DNR Air Permit Improvement Initiative

<http://dnr.wi.gov/org/aw/air/apii/>

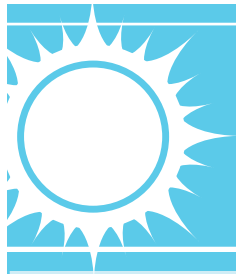


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# Air Pollution Control Permit Basics

## Why are air pollution control permits needed?

Air permits limit the amount of air pollution a facility is allowed to emit so the air people breathe stays clean and healthy. Permits identify the regulatory requirements that facilities must meet and help facilities show compliance with those requirements.

The Wisconsin air pollution control permit program consists of two main subprograms: one for **construction permits** and one for **operation permits**.

**Construction permits** ensure that proposed projects can meet air pollution standards before they are constructed.

**Operation permits** set emission limits and establish monitoring, record-keeping and reporting requirements. Operation permit conditions may be revised as facilities expand, replace equipment or change operations.

Individual permits are customized to promote environmental compliance and provide a basis for legal enforcement if permit conditions are violated.

The permitting process is meant to be transparent. Almost all permit-related documents are open records, including applications, modeling analyses and permit drafts. Input from the public and the permit applicant is encouraged throughout the process and can affect the content of the permit. Federal and state laws require all air pollution sources in Wisconsin to have a permit unless the Department of Natural Resources (DNR) determines the source is exempt.

## Construction Permits

A construction permit allows a company to construct, modify, expand or replace an air pollution source. A construction permit also allows a company to operate the source for an initial trial period. This trial period is used to test equipment and demonstrate compliance with permit conditions. The source may be entirely new or part of an existing facility.

### Application Process

Companies currently submit applications for construction and operation at the same time, using the same set of forms. The construction permit typically expires after 18 months and can be extended up to another 18 months unless the permit specifies otherwise.

### Minor and major sources

Construction permits have different requirements depending on the permittee's potential to emit certain pollutants, and the air quality where the new source is located. A major emission source in an area of poor air quality, for example, will probably undergo a more detailed permit process than a minor source in an area of good air quality. Explanations of major, minor and exempted sources, "non-attainment" areas and New Source Review (a process that affects new and modified major pollution sources) are found in the *DNR Air Permit Glossary*.\*

### Timing

After a construction permit application is complete, the DNR will prepare a preliminary decision to approve or deny the permit. A 30-day public comment period follows, and a public hearing may be scheduled afterward. The DNR has 60 days after the close of the comment period or hearing to issue or deny a construction permit.

### Fees

Fees for construction permit processing in fiscal year 2003 ranged from \$2,300 to \$111,600, with an average of \$13,260 and a median of \$9,050. Check the *DNR Air Permit Glossary*\* for an itemized list of construction permit fees.

### DNR Work Progress

The DNR issued 177 construction permits in fiscal year 2003, 27 of which involved major pollution sources. Average processing time from the receipt of a complete application to final permit decision was 90 days. The DNR is revising Wisconsin's New Source Review rules to address December 2002 federal rule changes. Revisions will maintain environmental protection, reduce administrative burdens and provide increased flexibility to industry.

# Operation Permits

An operation permit allows a company to operate a pollution source. The operation permit typically covers all polluting equipment and activities within a facility. When a company makes a change by constructing, modifying, replacing or reconstructing an air pollution source, its operation permit conditions may change. The company may also need a construction permit before such changes are undertaken.

## Application Process

### New Pollution Sources

Companies undergoing construction or modification currently submit applications for construction and operation at the same time, using the same set of forms. Initial operation of the source begins under the terms of the construction permit.

During the initial operation period, the permittee carries out the testing, monitoring and compliance certification provisions of the construction permit. Results are promptly submitted to the DNR, thereby completing the operation permit application. The permittee is then automatically covered under an application shield until the operation permit is issued.

### Existing Pollution Sources

Federal and state laws require most existing pollution sources to have an operation permit. In Wisconsin, existing facilities usually have a facility-wide operation permit to consolidate all operation permit requirements. Additional or modified pollution sources at these facilities are permitted through a revision to the facility-wide permit.

## Minor and major sources

Operation permits are generally divided into two categories: minor source permits and major source permits. Major source permits are issued to sources that have the potential to emit pollutants above certain levels. Minor source permits are issued to sources that do not have the potential to emit above these levels. Major source operation permits (and some minor source operation permits) are sometimes called **Title V (five)** or **Part 70** permits in reference to portions of the Federal Clean Air Act and U.S. Code that regulate these sources. Check the ***DNR Air Permit Glossary***\* for more details.

## Other operation permits

**Synthetic minor operation permits** (also called Federally Enforceable State Operating Permits) apply to those sources that might normally be considered major sources but take documented, federally enforceable actions to reduce their emission potential below major source levels.

**General operation permits** are available only to sources in certain categories such as rock crushers or small heating units. These permits apply to either a whole facility or a process line and contain the same types of limitations and conditions as other permits. Each company that receives a general operation permit is subject to identical permit terms and conditions. The application and review process is substantially simplified based on what the DNR knows about the source category.

## Timing

Once the operation permit application is complete, the company will be protected under an application shield until the operation permit is issued.

## Fees

There is no application fee for an operation permit, but companies required to have an operation permit are sometimes subject to annual emissions fees. These fees are only applicable if actual emissions are greater than certain thresholds in a given calendar year. Annual emissions fees in 2002 ranged from \$179 to \$473,726, with an average of \$7,650.

## DNR Work Progress

The DNR received about 1,300 operation permit applications between May 1994 and October 1995, after federal rule changes required all major and some minor pollution sources to obtain new operation permits.

As of December 2003, the DNR has processed about 960 of these 1,300 applications. The DNR plans to process the rest of these applications by December 31, 2004. All synthetic minor permit applications (FESOPs) will be processed by July 1, 2005. The DNR Air Permit Streamlining Team is collaborating with stakeholders and other states to improve permitting efficiency.

\* The DNR Air Permit Glossary and other information on air permits can be found online at: <http://www.dnr.wi.gov/org/aw/air/apii/>  
If you have questions, please contact Jeff Hanson, DNR at (608) 266-6876.



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### Issues Raised by Wisconsin's Act 118

- 1.) 285.17(2)(b) prevents WDNR from imposing monitoring requirements in a Title V permit if, upon request of the permittee, the WDNR Secretary determines that the monitoring is "unreasonable." The WDNR Secretary is required to consider, among other factors, whether similar requirements have been imposed on similar sources. However, Title V requires permitting authorities to include in a Title V permit all requirements applicable to a source, including monitoring, regardless of what requirements apply to other similar sources.
- 2.) 285.60(2g) provides for the use of "registration" permits to authorize construction, operation, or both for sources with low actual or potential emissions. It isn't clear from what we have available to review what sources might be eligible for registration permits or whether they are consistent with the requirements of New Source Review and Title V.
- 3.) 285.60(3) authorizes WDNR to issue general operation or construction permits to similar stationary sources. It isn't clear what types of sources would be eligible for general permits or whether these permits are consistent with New Source Review and Title V requirements.
- 4.) 285.60(5m) allows persons to commence construction or modification of stationary sources prior to issuance of a construction permit if the person shows that commencing construction is "necessary to avoid undue hardship." The Clean Air Act and New Source Review regulations don't provide for any waiver from the requirement to obtain a permit before commencing construction.
- 5.) Section 285.60(6) exempts minor sources from the requirement to obtain construction and operating permits if the emissions from the sources do not present "a significant hazard to public health, safety or welfare or to the environment." This is contrary to section 110(a)(2)(c) of the Clean Air Act, which requires the regulation of the construction and modification of any stationary source as necessary to assure that the NAAQS are achieved, and to Title V which can apply to minor sources if they are subject to requirements under sections 111 or 112(r) of the Act or if they belong to a source category identified under 40 C.F.R. § 70.3 by the Administrator as being subject to Title V.
- 6.) 285.60(9) provides that WDNR must respond within 30 days to a petition to determine that a type of source meets the criteria for a registration or general permit. It isn't clear whether there are ramifications if WDNR fails to meet this deadline. Also, if WDNR determines that the source is eligible for a registration or general permit, Act 118 doesn't provide WDNR any discretion to deny the registration or general permit for other reasons.
- 7.) 285.60(10) provides that WDNR must implement measures to "allow timely installation and operation of equipment and processes and the pursuit of related economic activity by lessening [permitting] obligations." This includes expanding the use of construction permit waivers and exemptions and the use of registration and general permits. This appears to be inconsistent with permitting requirements of the Clean Air Act.

8.) 285.61(3)(a) provides that the department must prepare an analysis regarding the effect of a proposed major source construction permit on ambient air quality and a preliminary determination on the approvability of the permit application within 90 days after the application is considered complete. It isn't clear whether this means that the department must complete a draft construction permit within this timeframe, or what the ramifications are for the department's failure to comply with this requirement.

9.) 285.61(7)(a) provides that requests for a hearing be granted only if the person requesting the hearing is "affected by the issuance of the permit." 40 C.F.R. 70.7(h) does not place any limitations on persons that can request a hearing. This section of Act 118 places a higher burden on a person seeking a public hearing than the person would have under Title V.

10.) 285.62(7)(b) provides that WDNR must issue an operating permit 180 days after the application is considered complete or after the applicant submits the results of all testing and monitoring required under the construction permit, whichever is later. It isn't clear what the ramifications are of WDNR's failure to meet this deadline.

11.) 285.66(2)(b) allows WDNR to include an expiration date in a general permit. If WDNR issues a general permit in place of a construction permit, this may be contrary to New Source Review requirements.